Gendered Justice:
Women Workers, Gender, and Master and Servant Law in England, 1700-1850

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Abstract

As England industrialized in the eighteenth and nineteenth centuries, employment relationships continued to be governed, as they had been since the Middle Ages, by master and servant law. This dissertation is the first scholarly work to conduct an in-depth analysis of the role that gender played in shaping employment law. Through a qualitative and quantitative examination of statutes, high court rulings, and records of the routine administration of the law found in magistrates' notebooks, petty sessions registers, and lists of inmates in houses of correction, the dissertation shows that gendered assumptions influenced the law in both theory and practice. A tension existed between the law's roots in an ideology of separate spheres and the reality of its application, which included its targeted use to discipline a female workforce that was part of the vanguard of the Industrial Revolution.

A close reading of the legislation and judges' decisions demonstrates how an antipathy to the notion of women working was embedded in the law governing their employment relationships. An ideological association of men with productivity and women with domesticity underlay both the statutory language and key high court rulings. Therefore, although the law applied to workers of both sexes, women were excluded semantically, and to some extent substantively, from its provisions.

A quantitative analysis of 5590 cases of employment conflicts, drawn from 64 different sources and entered into two databases, reveals that gender shaped the rates of prosecutions brought by and against male and female workers, as well as the types of conflicts in which they were involved, and the outcomes of cases. In general, female workers were treated slightly more leniently as defendants than male workers, although they were slightly less successful as plaintiffs – except in cases of assault. However, female textile workers were treated more harshly than female workers overall, and than male textile workers. They were also an exception to the

downward trend of female servants' involvement in cases over the course of the period. As women were increasingly driven out of employment in arable regions, they made up a decreasing share of workers in master and servant disputes.

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Introduction

On May 13, 1843, Sophia Wanstall appeared at the offices of Kingsford and Wightwick, clerks to the justices, in Watling Street near the Canterbury Cathedral, where a weekly meeting of petty sessions for the Home Division of the Lathe of St. Augustine was being held.[1] She complained to the presiding magistrates that her master, Mr. Sladden, who employed her as a cook, had refused to give up her clothing and assaulted her when she attempted to retrieve it. According to her version of events, which her witness, the labourer Stephen Whitehead, corroborated, she had left Sladden's service on Sunday and returned the afternoon of the following day with Whitehead to collect her belongings. Sladden and his wife would not turn them over, so Sophia went upstairs to fetch them herself. As she was gathering her bundle of possessions, her master stomped on her bandbox and kicked her hand twice – "with vengeance," Whitehead observed. Sladden countered that Sophia had entered his service without a recommendation, having represented that she lived with her former employer for fourteen years. When Sladden began making inquiries and was unable to confirm this story, Sophia ran away. The next day, as she had deposed, she arrived back at the house with Whitehead, but by Sladden's account they were both "very drunk." He claimed that he had refused to pay her wages, but did give her permission to gather her clothing. He denied kicking her box or her hand. The housemaid Sarah Selby testified on his behalf, declaring that she had been in the kitchen when Sophia came in, and that she had indeed looked "very tipsy" and had "abused [Sarah] for touching her things." The maid swore that her master had "never lifted a…foot" against his cook, though she admitted that "there was some blood" on Sophia's hand. After hearing both sides, the

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[1]PP 1856, Vol. 50, "Return from each County in England and Wales of Names of Petty Sessional Divisions, 235-235-1, p. 5; Robert Furley, *A History of The Weald of Kent, With an Outline of the History of the County to the Present Time*, Vol. II – Part II (Ashford: Henry Igglesden, 1874), 535.

magistrates dismissed the case. Sladden, the defendant, paid 3 shillings to cover the costs of the proceeding.[2]

Sophia Wanstall and Mr. Sladden were among the countless workers and masters in England who, in order to resolve disputes, turned to the justices of the peace (JPs). These amateur magistrates, sitting in the parlours of their elegant homes or in the offices and inns where petty sessions were convened, generally had no formal legal training – for instance, William Delmar, one of the JPs who heard Sophia's case, was a gentleman; his fellow justice William Foord Hilton was a Canterbury banker.[3] Indeed, the majority of magistrates in England and Scotland are still laymen.[4] Yet these JPs were empowered to administer a range of criminal and civil matters summarily, including master and servant law, the body of statutes and judicial doctrine that regulated English employment relationships for more than half a millennium.[5] The surviving records of these master and servant cases are crucial sources for comprehending how the conflicts that frequently arose between workers and employers were dealt with by the law and by less formal means, and how this impacted the profound social and economic transformations of eighteenth- and nineteenth-century England. The operation of master and

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[2] Kent History and Library Centre (KHLC), PS/SA/Sr/1, Lathe of St. Augustine Petty Sessions Proceedings, May 13, 1843.
[3] Sylvanus Urban, "Deaths," *The Gentleman's Magazine and Historical Review*, Vol. 222, (London: Bradbury, Evans & Co., 1867), 685; John Thornton, Edward Saurin, "To Messrs. Gurney and Co.," *London Gazette* (August 10, 1844), 2911.
[4] Richard Vogler, "Magistrates' Courts and the Struggle for Local Democracy, 1886-1986," *Censure, Politics and Criminal Justice*, ed. Colin Sumner (Open University Press, 1990), 59-92; Z. K. Bankowski, N. R. Hutton and J. J. McManus, *Lay Justice?* (Edinburgh: T. & T. Clark, 1987).
[5] Norma Landau, *The Justices of the Peace, 1679-1760* (Berkeley: University of California Press, 1984), 23, 27-28; Douglas Hay and Paul Craven, "Introduction," *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955,* ed. Douglas Hay and Paul Craven (Chapel Hill: The University of North Carolina Press, 2004), 1-2.

servant law had far-reaching consequences, including an important role in the development of the trade union movement, which continue to resonate in today's world.[6]

However, the history of master and servant law is missing a vital component. The fact that Sophia Wanstall was a woman mattered as much in her encounter with the summary dispensation of justice as the fact that she was a worker. Too often the critical role of gender in shaping employment law has been overlooked or de-emphasized, though it influenced everything from the statutes and high court decisions that constituted the law in theory to its actual application in the lives of ordinary men and women – from the types of complaints workers were most likely to make, and offences with which they were most likely to be charged, to the success of their prosecutions and the severity of their punishments. It even affected long-term patterns and trends, such as changes in plaintiff and defendant ratios and sentencing patterns over time. The experiences of the myriad women like Sophia Wanstall whose cases are preserved in the records of magistrates were often different from those of their male counterparts because they were *female* servants. It is important to make gender as central to scholarly discussions of master and servant law as it was to the law's theoretical foundation and actual operation.

Historical Context: Women's Work During the Industrial Revolution

In order to write about the impact of employment law on working women, it is important to understand what sort of work women were doing. The span of roughly one hundred and fifty

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[6] See for example Christopher Frank, "Britain: The Defeat of the 1844 Master and Servant Bill," *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955*, ed. Douglas Hay and Paul Craven (Chapel Hill: The University of North Carolina Press, 2004), 402-421 and Christopher Frank, *Master and Servant Law: Chartists, Trade Unions, Radical Lawyers and the Magistracy in England, 1840-1865* (Burlington: Ashgate, 2010) on the beginning of the national campaign by workers against the law's penal sanctions, and the historiographical discussion below for a more detailed analysis of the significance of master and servant law.

years covered by this dissertation, from the end of the seventeenth century to the middle of the nineteenth, was a period of immense economic and social transformation as Britain became the first nation in the world to industrialize. The impact of the Industrial Revolution on the economic standing and labour force participation of women is a subject of debate in the literature. Optimists contend that industrialization increased women's economic opportunities and made them more independent, while pessimists argue the opposite.[7]

The customary narrative on which both interpretations are based is that prior to industrialization, women and men laboured together in the home for a family wage. Agricultural change and industrial expansion combined to extinguish this family economy. Enclosure prevented the exploitation of common lands, which had hitherto supplemented family earnings, while technological innovation and the rise of large-scale industry removed production from the home into centralized workshops. Both developments increased dependence on the individual wage. Women lost their earning capacity in the home, but some found employment in the new factories emerging in the late eighteenth century.[8]

Some scholars assert that these changes were ultimately positive. For instance, Ivy Pinchbeck, a pioneer of the field, believed that "on the whole," industrialization proved to be "beneficial to women." She conceded that although the transition initially caused "misery and distress" and left women more dependent on men's wages, those who were eventually reabsorbed into industrial work outside the home had access to "better conditions, a greater

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[7] Jane Humphries, "'Lurking in the Wings…': Women in the Historiography of the Industrial Revolution," *Business and Economic History*, 20 (1991): 39.
[8] Ivy Pinchbeck, *Women Workers and the Industrial Revolution, 1750-1850* (F.S. Crofts and Company, 1930); Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Cambridge: Cambridge University Press, 1996), 147-151; Bridget Hill, *Women, Work, and Sexual Politics in Eighteenth-Century England* (Oxford: Basil Blackwell, 1989), 24-69; Amanda Vickery, "Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History," *The Historical Journal* 36 (1993): 402.

variety of openings and an improved status" than they had under the domestic system, which was characterized by "drudgery and monotony." When the state began regulating hours and conditions of work in factories, this new employment was "immeasurably superior…in its provisions for health and well-being" to the old system. Moreover, Pinchbeck contended that women enjoyed increased domestic leisure after the removal of industrial work to factories, and could devote more time and energy to home making and childcare.[9] More recently, Neil McKendrick has suggested that with industrialization, the earnings of women and children, which had hitherto made modest contributions to family budgets, became central to the domestic economy.[10] R. M. Hartwell has even credited the economic opportunities afforded by the Industrial Revolution with the beginnings of "the emancipation of women."[11]

However, the pessimists outweigh the optimists. According to Amanda Vickery, most modern women's history is founded on the "unquestioned belief that the transition to industrial modernity robbed women of freedom, status and authentic function."[12] Another pioneer of the field, Alice Clark, was an early proponent of this argument, maintaining that industrialization decreased women's standing and relative productive capacity. She asserted that husbands and wives had formerly been "mutually dependent," and that the "English Commonwealth did actually embrace both men and women in its idea of the 'Whole'" because they were both "essential for the continuance of human society." However, with the rise of capitalism, women became "dependent on the man's labour, or nearly so." The "mechanical State" that emerged

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[9] Pinchbeck, *Women Workers*, 4, 183-201, 306-316.
[10] Neil McKendrick, "Home Demand and Economic Growth: A New View of the Role of Women and Children in the Industrial Revolution," *Historical Perspectives in English Thought and Society in Honour of J. H. Plumb*, ed. Neil McKendrick (London: Europa Publications, 1974), 152-210.
[11] R. M. Harwell, *The Industrial Revolution and Economic Growth* (New York: Routledge, 2017; orig. 1971), 343. For another optimistic account of the impact of the Industrial Revolution on women, see Edward Shorter, *The Making of the Modern Family* (New York: Basic Books, 1975).
[12] Vickery, "Golden Age," 401.

"began with the conception that it was concerned only with male individuals." Although she never used the phrase, her study can be read as one of the first entries in the school of thought positing the existence of a pre-industrial 'golden age' of women's work.[13]

The 'golden age' argument holds that in the time before the Industrial Revolution, despite sexual inequality in the family's division of labour and decision-making, women possessed some power in the household because their work and skills were indispensable to an interdependent form of family production. The agricultural and industrial revolutions were "devastating" for women, as Deborah Oxley puts it. With the disintegration of the family economy, women were relegated to poorly remunerated, dull, peripheral tasks or to unpaid housework that had once been shared more equally between the sexes. They were increasingly dependent on male wages. Although some "feisty" women found greater freedom and higher wages in factory work, conditions were often harsh and unhealthy.[14]

However, the pessimist position has not gone unchallenged, even if its critics do not necessarily believe that industrialization improved women's economic opportunities either.

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[13] Alice Clark, *Working Life of Women in the Seventeenth Century* (London: Frank Cass & Co. Ltd., 1968; orig. 1919), 11-12, 307. Although it is outside the scope of this dissertation, the debate about a pre-industrial 'golden age' of women's work also encompasses the historiography of the medieval and early modern period. For proponents of a medieval 'golden age' of women's work, see: P. J. P. Goldberg, *Women, Work, and Life Cycle in a Medieval Economy: Women in York and Yorkshire c.1300-1520* (Oxford: Clarendon Press, 1992); Caroline M. Barron, "The 'Golden Age' of Women in Medieval London," *Medieval Women in Southern England*, Reading Medieval Studies 15 (Reading: University of Reading, 1989), 35-58; Christopher Dyer, *Making a Living in the Middle Ages: The People of Britain, 850-1520* (New Haven: Yale University Press, 2002), 280; Marjorie McIntosh, *Working Women in English Society, 1300-1620* (Cambridge: Cambridge University Press, 2005), 40. For opposition to the notion of a 'golden age' of women's work in the Middle Ages, see Judith M. Bennett, "Medieval Women, Modern Women: Across the Great Divide," *Culture and History, 1350-1600: Essays on English Communities, Identities and Writing*, ed. David Aers (Detroit: Wayne State University Press, 1992), 147-176; Judith M. Bennett, "Compulsory Service in Late Medieval England," *Past & Present* 209 (2010): 7-51; Mavis Mate, *Women in Medieval English Society, New Studies in Economic and Social History* (Cambridge: Cambridge University Press, 1999); Barbara Hanawalt, *The Wealth of Wives: Women, Law, and Economy in Late Medieval London* (Oxford: Oxford University Press, 2007).

[14] Oxley, *Convict Maids*, 147-156-157; Hill, *Women, Work,* 259-260, 262.

Rather, these dissenters dispute that a 'golden age' of women's work ever existed.[15] Olwen Hufton remarks that the location of a "*bon vieux temps* when women enjoyed a harmonious, if hard-working, domestic role and social responsibility before they were downgraded into social parasites or factory fodder" has "proved remarkably elusive."[16] Jan de Vries argues against the concept of the 'family economy,' contending that it was usually individuals rather than entire family units who participated in proto-industrial labour and that waged work and landlessness had been characteristic of most of Western Europe long before the alleged "painful break" with tradition brought on by industrialization.[17]

Maxine Berg has noted that women's economic opportunities were limited in the earlier period too. They were less independent and participated in fewer occupations than men even prior to the Industrial Revolution. Moreover, as Pinchbeck also pointed out, the jobs that women performed before industrialization could still be dull and exploitative. Female nail workers, for instance, were engaged in sweated labour by the middle of the eighteenth century, long before the introduction of any machinery into their industry.[18] In his study of the London labour market, Peter Earle found that the types of occupations in which women were engaged – a narrow range including the making and mending of clothing, domestic service, charring, laundry, and nursing – was generally the same in the seventeenth and eighteenth centuries as in 1851.[19]

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[15] Vickery, "Golden Age," 402-405; Pamela Sharpe, "Introduction," *Women's Work: The English Experience, 1650-1914*, ed. Pamela Sharpe (London: Arnold, 1998), 8.
[16] Olwen Hufton, "Women in History, Early Modern Europe," *Past & Present* 101 (1983), 126.
[17] Jan de Vries, *The Industrious Revolution: Consumer Behaviour and the Household Economy, 1650 to the Present* (Cambridge: Cambridge University Press, 2008), 100-103.
[18] Maxine Berg, "Women's Work, Mechanization and the Early Phases of Industrialization in England," *On Work: Historical, Comparative and Theoretical Approaches*, ed. R. E. Pahl (Oxford: Blackwell, 1988), 73, 84.
[19] Peter Earle, "The Female Labour Market in London in the Late Seventeenth and Early Eighteenth Centuries," *Economic History Review* 42 (1989): 328-353.

The acknowledgement of similarities between women's work experiences before and after industrialization, when taken to its theoretical extreme, is an emphasis on continuity rather than change in women's history. Judith Bennett is the foremost proponent of this view, arguing that the forms taken by women's work alter over the centuries, but the substance of it – "low skilled, low status, and poorly remunerated" – remains the same.[20] Bennett's position has provoked a backlash, particularly from Bridget Hill, who remarks scathingly that the "thesis of an unchanging role for women is not only mistaken but plays into the hands of those male historians who have long argued that women's experience has no part in history because everyone knows their role has been unchanging."[21] Pamela Sharpe has suggested diplomatically that we "cannot privilege either continuity or change in understanding women's experience."[22]

Stepping back from these theoretical debates, we can acknowledge that while a pre-industrial 'golden age' of women's work did not exist, the Industrial Revolution nevertheless precipitated changes in female labour. The picture that emerges is more nuanced and diverse than a straightforward narrative of amelioration or decline in women's economic standing and labour force participation. This varied by region and by trade.[23] However, it seems that on

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[20] Judith M. Bennett, *Ale, Beer, and Brewsters in England: Women's Work in a Changing World, 1300-1600* (Oxford: Oxford University Press, 1996), 5-6, 148; Judith M. Bennett, "Review: 'History That Stands Still': Women's Work in the European Past: Working Women in Renaissance Germany by Merry E. Wiesner," *Feminist Studies* 14 (1988): 278.

[21] Bridget Hill, "Women's History: A Study in Change, Continuity or Standing Still?" *Women's History Review* 2 (1993): 13. Bennett accuses Hill of misreading and misrepresenting her work in her reply to Hill's critique: Judith M. Bennett, "Women's History: A Study in Continuity and Change," *Women's History Review* 2 (1993): 173-184.

[22] Pamela Sharpe, "Commentary," *Women's Work: The English Experience, 1650-1914*, ed. Pamela Sharpe (London: Arnold, 1998), 21.

[23] Maxine Berg, "What Difference Did Women's Work Make to the Industrial Revolution?" *History Workshop Journal* 35 (1993): 26; Berg, "Women's Work," 71; Sharpe, "Introduction," 9; Nicola Verdon, *Rural Women Workers in Nineteenth-Century England* (Suffolk: Boydell Press, 2002), 197; Sara Horrell and Jane Humphries, "Women's Labour Force Participation and the Transition to the Male-Breadwinner Family, 1790-1865," *Economic History Review* 48 (1995):100.

balance women's economic opportunities had decreased by the end of the century and a half covered by this dissertation.

In rural areas, the impact of industrialization on women's work is mixed. As the pessimists argue, enclosure proletarianized landless labourers and small occupiers who had previously relied on common right for a measure of independence. They became more reliant on wages as they lost access to pasture, fuel, food, and waste materials taken from common lands. Women in particular had been the primary exploiters of the commons, and were driven by their loss into a reserve pool of wage labour.[24] According to Oxley, rural women were hardest hit by industrialization. Their heights, educational attainments, and life spans decreased relative to earlier generations.[25]

There seems to have been a decline in women's labour force participation in the arable south and east of England. Robert Allen has stated that the amalgamation of large arable farms reduced women's employment.[26] Ann Kussmaul argues that after the mid-eighteenth century, farm service, characterized by renewable annual contracts and accommodation in the farmer's household, decreased in the southeast and was finally abandoned post-1815 due to a glutted rural labour market; increased class tensions and social distance between masters and workers; and rising grain production, which depended more on day labour. Women were particularly

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[24] Jeanette Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (New York: Cambridge University Press, 1993); Jane Humphries, "Enclosures, Common Rights, and Women: The Proletarianization of Families in the Late Eighteenth and Early Nineteenth Centuries," *The Journal of Economic History* 50 (1990): 18, 41. For another discussion of the importance of common rights, particularly gleaning, to women see: Peter King, "Customary rights and women's earnings: the importance of gleaning to the rural labouring poor, 1750-1850," *Economic History Review* 44 (1991): 461-476.

[25] Oxley, *Convict Maids*, 147-156-157; Hill, *Women, Work,* 259-260, 262.

[26] R. C. Allen, *Enclosure and the Yeoman: The Agricultural Development of the South Midlands, 1450-1850* (Oxford: Clarendon Press, 1992), 215-217.

disadvantaged by the decline of farm service in the south and east, since they were more likely to be servants than day labourers.[27]

The work of Keith Snell has been especially influential in establishing the relative exodus of female workers from arable agricultural employment. He argues that men and women used to perform the same sorts of farm work, but from about the 1760s an increasing sexual division of labour led to a decline in women's annual participation rates and earning capacity in the south and east. The growing emphasis on grain production with its concomitant greater use of male labour; widespread replacement of the sickle with the strength-intensive scythe; and exclusionary pressure from men facing structural unemployment themselves, all contributed to women's declining involvement in harvest work and relegation to the "increasingly insignificant" dairy and calving season, spring weeding, and summer haymaking. Women's real wages fell and aside from straw plaiting and domestic service, there were few opportunities for them to be reabsorbed into the economy in these regions. Conversely, women's wages did not fall – and even rose after the Napoleonic Wars – in the more pastoral west, since female labour was more prominent in dairying than in arable farming.[28] Kussmaul has also argued that farm service did not decline in the north and west, where the topography made it more difficult to consolidate farms and grow grain profitably. Moreover, the competition from manufacturing made it necessary for farmers to keep using annual contracts to assure themselves of continuous labour.[29]

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[27] Ann Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge: Cambridge University Press: 1981), 22-23, 29, 31, 97, 100-109, 117-125, 129-131.

[28] K. D. M. Snell, *Annals of the Labouring Poor: Social Change and Agrarian England, 1660-1900* (Cambridge University Press, 1985), 21-22, 38, 40, 45, 50, 59-62, 312.

[29] Kussmaul, *Servants in Husbandry*, 109, 121. A. J. Gritt argues that as a result of some methodological errors made by Kussmaul in her use of the 1831 census data, the "distinction between the high service north and west and the low service south and east have been very much over exaggerated." However, he agrees that women were more common in the pastoral districts than the large, capitalist, arable farms of the southeast. A. J. Gritt, "The Census and the Servant: A Reassessment of the Decline and Distribution of Farm Service in Early Nineteenth-Century England," *Economic History Review* 53 (2000): 95, 105.

Snell's account has not gone unchallenged. Some scholars have raised doubts about the role he attributes to changing harvest technologies in marginalizing women's agricultural work, arguing that the scythe had not universally replaced the sickle by the end of the eighteenth century, or even by the mid-nineteenth century.[30] Others question whether the change he observed in women's seasonal unemployment from the spring to the fall, which he took as evidence of a switch from autumn harvest work to less valued spring and summer tasks such as weeding, actually reflects such a marginalization of their work. Sharpe has posited that the changing seasonal pattern can be explained by the growth of "London based fashion trades and services" that would have alleviated women's spring unemployment.[31] Berg has speculated that lacemaking and straw plaiting might have lured women away from agricultural work after the mid-eighteenth century, rather than absorbing those whose employment on farms had been reduced.[32]

Snell's contention that men and women had once performed the same sorts of agricultural work is also debateable.[33] Alfred Hassell-Smith and Pamela Sharpe have both found a sexual division of farm labour prevailing since the sixteenth century, in Norfolk and Essex respectively, with female workers predominantly performing tasks such as weeding and gleaning, not ploughing, harrowing, or threshing.[34] On the other hand, in some areas, such as seventeenth-century Cornwall, women performed a much wider range of agricultural tasks, including

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[30] Verdon, *Rural Women Workers*, 27.
[31] Pamela Sharpe, *Adapting to Capitalism: Working Women in the English Economy, 1700-1850* (Basingstoke: Macmillan, 1996), 75-76.
[32] Maxine Berg, *The Age of Manufactures, 1700-1820: Industry, Innovation and Work in Britain* (Abingdon: Routledge, 1994), 124.
[33] Vickery, "Golden Age," 403.
[34] Alfred Hassell-Smith, "Labourers in Late Sixteenth-Century England: A Case Study From North Norfolk, Parts I and II," *Continuity and Change* 4 (1989): 11-52, 367-294; Sharpe, *Adapting to Capitalism*, 74-99.

winnowing barley and threshing oats. It seems that the sexual specificity of farm labour differed by locality.[35]

Although the causes were more complex than Snell's account implies, and the regional exceptions and variations greater, there nevertheless does appear to have been an overall decline in women's agricultural employment in the south and east. Nicola Verdon notes that while reliable statistics on female labour force participation do not exist for the early nineteenth century, printed and non-printed sources indicate that increased arable production led to a "shrinking" level of female employment in some areas, including parts of East Anglia – though in other areas, more women were employed for manual tasks such as hoeing, weeding, and stone picking. In most of southern England, the probability of women being hired as annual farm servants was "rapidly diminishing." After the mid-nineteenth century, census data and farm records both reinforce the impression of a progressive withdrawal of women from the agricultural work force, as day labourers and as yearly servants.[36] Sara Horrell and Jane

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[35] Pamela Sharpe, "Time and Wages of West Country Workfolks in the Seventeenth and Eighteenth Centuries," *Local Population Studies* 55 (1995): 66-68; Sharpe, *Adapting to Capitalism*, 74.

[36] Verdon, *Rural Women Workers*, 196-197. Verdon emphasizes that "regional diversity is they key to understanding rural women's work," as local studies illustrate (197). Joyce Burnette found a decline in work opportunities in husbandry for female labourers near Sheffield between the 1770s and 1830s following changes brought about by enclosure. Joyce Burnette, "Labourers at the Oakes: Changes in the Demand for Female Day-Labourers at a Farm Near Sheffield During the Agricultural Revolution," *Journal of Economic* 59 (1999): 41-67. Other studies indicate steady or even increasing employment of female workers, for instance: Judy Gielgud, "Nineteenth-Century Farm Women in Northumberland and Cumbria: The Neglected Workforce," (PhD Dissertation, University of Sussex, 1992); Mary Bouquet, *Family, Servants and Visitors: The Farm Household in Nineteenth and Twentieth-Century Devon* (Norwich: Geo Books, 1985); Helen V. Speechley, "Female and Child Agricultural Day Labourers in Somerset, c. 1685-1870," (PhD Dissertation, University of Exeter, 1999); Celia Miller, "The Hidden Workforce: Female Fieldworkers in Gloucestershire, 1870-1901," *Southern History* 6 (1984): 139-161. Notably, these studies were all of northern or western areas, where Snell and Kussmaul have both argued that women's agricultural employment was not diminishing.

Humphries have also found that the general trend of women's employment in agriculture was "downwards."[37]

Over the course of our period, women's industrial employment seems to have expanded and then contracted. Berg argues that women's participation in trades was actually widespread in the eighteenth century, although almost always more restricted and subordinate than men's. In fact, women workers made a proportionately greater contribution to the market-oriented manufacturing labour force (in both the 'traditional' and 'modern,' mechanized sectors) than they had done before or would do in the later stages of industrialization.[38] They were employed in high proportions – for low pay – in the rapidly expanding handicraft industries. They worked in limited sections of the leather industries, and more extensively in some sectors of the metal trades, especially nailmaking, as well as a broad range of hardware trades. They "dominated" all of the major manufactures of the textile industries, including spinning in the woollen and linen industries, silk throwing, lacemaking, hand knitting, and framework knitting – first as ancillary labour and increasingly, with the bypassing of apprenticeship regulations, on the frames.[39]

In the 'classic' decades of the Industrial Revolution, female labour was crucial to the most dynamic sectors of the economy.[40] The industries associated with the greatest productivity

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[37] Horrell and Humphries, "Women's Labour Force Participation," 112.

[38] Berg, "What Difference," 40; Maxine Berg and Pat Hudson, "Rehabilitating the Industrial Revolution," *Economic History Review* 45 (1992): 35. There were no clear-cut divisions between the 'traditional' handicraft industrial sector and the 'modern' mechanized sector. These existed in a symbiotic relationship. For decades, the productivity of the 'modern' sector was bolstered by the 'traditional' sector, where "radical technical and organizational change" was often pioneered. Berg and Hudson, "Rehabilitating the Industrial Revolution," 30-32. See also Maxine Berg, *The Machinery Question and the Making of Political Economy, 1815-1848* (Cambridge: Cambridge University Press, 1980), 26-29; Maxine Berg, "Factories, Workshops and Industrial Organization," *The Economic History of Britain Since 1700,* Vol. 1: 1700-1860, 2nd ed., ed. Roderick Floud and Deirdre McCloskey (Cambridge: Cambridge University Press, 1994), 123-151.

[39] Maxine Berg, "Women's Work, Mechanization," 66-70.

[40] Berg, "What Difference," 26, 29. The 'classic' decades of the Industrial Revolution are the late eighteenth and early nineteenth century. Arnold Toynbee, who first popularized the term "Industrial

increases, and those pioneering technological and organizational innovations, were mainly those industries with large female workforces. Women made up a significant share of workers in the factories and mills proliferating at the end of the eighteenth century. Along with children, they were employed in higher proportions than men in the early factories of the cotton industry, for

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Revolution" in the 1870s, used it to describe momentous changes in agriculture and manufacturing occurring between1760 and1840. Arnold Toynbee, *Lectures on the Industrial Revolution of the Eighteenth Century in England: Popular Addresses, Notes and Other Fragments* (London: Rivingtons, 1884), 27-152, 189, 219. Walt Rostow and other economists and historians have since argued that these decades witnessed Britain's 'take-off' – a period of rapid and dynamic economic growth brought about by the rise of industry and machine manufacture. Walt Whitman Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960), 4-16; David Landes, *The Unbound Prometheus: Technological Change and Industrial Development in Western Europe from 1750 to the Present*, 2nd ed. (Cambridge: Cambridge University Press, 2003; orig. 1969), 1; Phyllis Deane, *The First Industrial Revolution* (Cambridge: Cambridge University Press, 1967); Phyllis Deane and W. A. Cole, *British Economic Growth, 1688-1959: Trends and Structure* (Cambridge: Cambridge University Press, 1962). On the history of the traditional concept of the Industrial Revolution as a sharp discontinuity, see William Hardy, *The Origins of the Idea of the Industrial Revolution* (Bloomington, Indiana: Trafford Publishing, 2006). Other scholars have disputed the extent to which these decades were truly revolutionary, emphasizing that growth and mechanization were much slower and more piecemeal than these accounts suggest and pointing out that even in 1850 large sectors of the economy remained unindustrialized. J. H. Clapham, *An Economic History of Modern Britain, The Early Railway Age, 1820-1850.* (Cambridge: Cambridge University Press, repr. 1939; orig. 1926); Joseph Schumpeter, *Capitalism, Socialism and Democracy* (New York: Harper and Brothers, 1942); Joseph Schumpeter, *Business Cycles: A Theoretical, Historical and Statistical Analysis of the Capitalist Process* (New York: McGraw-Hill Book Company, 1939); Raphael Samuel, "Workshop of the World: Steam Power and Hand Technology in Mid-Victorian Britain," *History Workshop* 3 (1977), 6-72; A. E. Musson, *The Growth of British Industry* (London, 1978), 8, 62-65; Knick Harley, "British Industrialisation Before 1841: Evidence of Slower Growth During the Industrial Revolution," *Journal of Economic History*, 42 (1982): 267-289; N. F. R. Crafts, *British Economic Growth during the Industrial Revolution* (Oxford, 1985), ch.1; N. F. R. Crafts, "British economic growth, 1700-1831: A Review" *Economic History Review* 36 (1983): 177-199. See also N. F. R. Crafts and Knick Harley, 'Output Growth and the British Industrial Revolution: A Restatement of the Crafts-Harley view," *Economic History Review* 45 (1992): 703-730. On the historiography of the timing of the Industrial Revolution, see David Cannadine, "The Present and the Past in the English Industrial Revolution, 1880-1980," *Past and Present* 103 (1984): 131-172; Emma Alice Griffin, "The 'industrial revolution': interpretations from 1830 to the present." Draft Chapter, academia.edu, 2013, 1-19 and Emma Alice Griffin, *A Short History of the British Industrial Revolution* (Basingstoke: Palgrave MacMillan, 2010), 5-14. Still, Berg and Hudson have argued that this gradualist consensus does not take into account the symbiotic relationship of the 'traditional' and 'modern' sectors of the economy, or the revolutionary productivity gains achieved by technical and organizational innovations associated with a female workforce. Berg and Hudson, "Rehabilitating the Industrial Revolution," 25-50; Berg, "What Difference," 41.

instance.[41] They were desirable workers for several reasons. They were a cheap source of labour, since they had customarily received lower wages than men in domestic production long before the introduction of factories. They were believed to be more docile and compliant than male workers. Moreover, Berg notes that they were "simply assumed" to be the target workforce of any novel machines and techniques, in part because manufacturers and inventers thought that women's manual dexterity and fine motor skills were superior to men's.[42]

However, mechanization also deprived women of an important source of casual employment. Hand spinning, which complemented women's other social and economic roles, including seasonal agricultural work, childcare, housework, and the exploitation of the commons, was a ubiquitous female by-employment in the eighteenth century and an important source of supplementary earnings. It can be considered the "archetype of the female domestic craft," as Berg notes. Craig Muldrew has estimated that there were likely as many as one million women and children employed at spinning wool alone by the middle of the eighteenth century. The decline of spinning with the advent of new technology, such as the jenny, was devastating.[43] Although some women found work in factories and newer manufactures, those who were not

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[41] On the importance of child labour in the Industrial Revolution, which was prevalent at "astonishing levels" and is "best thought of as a kind of mastic holding the early industrial economy together," see Jane Humphries, *Childhood and Child Labour in the British Industrial Revolution* (Cambridge: Cambridge University Press, 2010), 7-8. On women in the cotton industries, see Janet Greenlees, *Female Labour Power: Women Workers' Influence on Business Practices in the British and American Cotton Industries, 1780-1860* (London, Routledge, 2017; orig. 2007).

[42] Berg, "What Difference," 27-35; Berg and Hudson, "Rehabilitating the Industrial Revolution," 36-37; Deborah Valenze, *The First Industrial Woman* (Oxford: Oxford University Press, 1995), 85-91.

[43] Verdon*, Rural Women Workers*, 42-43; Valenze, *First Industrial Woman*, 68-84; Berg, "Women's Work," 77; Berg, *Age of Manufactures,* 137; Craig Muldrew, "'Th'ancient Distaff' and 'Whirling Spindle': Measuring the Contribution of Spinning to Household Earnings and the National Economy in England, 1550-1770," *Economic History Review* 65 (2012): 498; Humphries, "'Lurking in the Wings,'" 39; Berg, "Women's Work, Mechanization" 77.

reabsorbed were left unemployed and impoverished, or else pushed into domestic service, which was the "fastest-growing occupational category of all."[44]

In contrast to the eighteenth century, the nineteenth century seems to have ushered in a decline in women's labour force participation. Snell and others have argued that the number of female apprentices declined. Whereas girls had previously been apprenticed to a variety of trades, often those practised by their fathers, they began to be relegated more and more to needlework occupations. The term 'journeywoman' even died out of common vocabulary.[45] Using witness statements in Old Bailey trial records to plot hourly, daily, and annual labour patterns over the course of the long eighteenth century, Hans-Joachim Voth noted a sharp increase in women engaged in paid work between 1760 and 1800, and a decrease thereafter.[46] In an innovative study using household budgets, Sara Horrell and Jane Humphries have found a brief increase, probably due to increased industrial employment and putting-out work related to

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[44] Berg, "What Difference," 29; Humphries, "'Lurking in the Wings,'" 39-40; Sara Horrell and Jane Humphries, "'The Exploitation of Little Children': Child Labor and the Family Economy in the Industrial Revolution," *Explorations in Economic History* 32 (1995): 502; Oxley, *Convict Maids*, 122, 154; Carolyn Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2010), 38.

[45]Snell, *Annals of the Labouring Poor*, 272, 283, 294-296, 309; Horrell and Humphries, "The Exploitation of Little Children," 502; Oxley, *Convict Maids*, 122, 154.

[46] Hans-Joachim Voth, *Time and Work in England, 1750-1830* (Oxford: Clarendon Press, 2000), 17-58, 108-109. Voth determined that by 1830 the working year was approximately 20% longer than it had been in 1760. He concluded that this was largely due to the reduced number of holidays and the disappearance of "St. Monday." Hans-Joachim Voth, "Time and Work in Eighteenth-Century London," *The Journal of Economic History* 58 (March 1998): 29-58; Voth, *Time*, 59-161. See also E. P. Thompson's seminal article "Time, Work-Discipline and Industrial Capitalism" for a starting point into the literature on time and work in industrializing Britain. Thompson argues that labourers had enjoyed greater irregularity and flexibility in their schedules, as well as more frequent leisure and holiday time, before the rise of large-scale machine-based manufacturing, which transformed their experience of labour by subjecting them to harsh new disciplinary regimes, strict adherence to the clock, and close supervision. E. P. Thompson, "Time, Work-Discipline and Industrial Capitalism," *Customs in Common* (New York: The New Press, 1993), 352-403.

factory production, in women's economic opportunities following a pattern of dislocation during the Napoleonic Wars, and a reversal of this trend at mid-century.[47]

Jan de Vries has also found a decline in women's labour force participation after the mid-nineteenth century, "accounted for overwhelmingly" by the withdrawal of married women from the paid workforce. He argues that a growing preoccupation with non-market supplied "goods" such as hygiene, nutrition, and domesticity prompted this structural shift, since women were needed at home to provide the comforts that wages could not buy. In his opinion, this "breadwinner-homemaker household" model needs to be rescued from the "condescension of contemporary historians" who view it as "suffocating" for women. He contends that because the homemaker provided domestic comforts, she actually possessed "substantial bargaining power in the household despite…the reassertion – far more apparent than real – of patriarchy."[48]

Other scholars take a somewhat less sanguine view of nineteenth-century developments. They find evidence of women being bullied and coerced out of the workforce, or relegated to low-wage tasks, rather than withdrawing voluntarily in a reallocation of household resources and expenditures. Anna Clark has demonstrated, for instance, that some working-class men struggling against loss of status, wages, and employment with the advent of industrialization turned, often violently, against wage-earning female rivals. In response to the perceived threat of cheap female labour, male artisans organized to exclude women from their trades or to restrict them to the 'unskilled branches.'[49]

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[47] Horrell and Humphries, "Women's Labour Force Participation," 112.
[48] De Vries, *Industrious Revolution*, 143, 237; Jan de Vries, "The Industrial Revolution and the Industrious Revolution," *Journal of Economic History* 58 (1994): 260-262.
[49] Anna Clark, *Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995). Other scholars have also identified this strategy on the part of male workers. For instance, Marc Steinberg has shown that male weavers and spinners who felt disempowered by the degradation of their trade engaged in a class struggle that catalyzed a model wherein men claimed

Definitions of 'skilled' and 'unskilled' labour are rooted in "social and gender distinctions" far more than in technology, as Berg points out. For example, women supposedly made good factory workers in part because of their 'nimble fingers' – acquired through years of training in "household arts and needlework" – and their ability to focus on monotonous and labour-intensive tasks. These attributes increased productivity. They were not considered skills, however, because skill was closely associated with "masculine virtues" – an association that working-class men helped to cultivate. They felt that their 'manliness,' which they connected with the ability to control the household and provide for their families, was increasingly threatened by the degradation of their crafts due to mechanization. They fought to defend it by designating their labour as 'skilled' and that of women as 'unskilled' in a bid to reinforce the indispensability of their own work and ensure that women could not compete with them for jobs, since they would be unqualified to perform crucial 'skilled' tasks simply by virtue of being women.[50]

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the rights of citizenship on behalf of their households and women acted as moral supporters in a domestic capacity. He suggests, though, that gender divisions were partially mitigated by the bonds of class, community, and household between men and women. Marc W. Steinberg, *Fighting Words: Working-Class Formation, Collective Action, and Discourse in Early Nineteenth-Century England* (Ithaca: Cornell University Press, 1999). Robert Hall contends that Ashton mule spinners also attempted to defend their identities as skilled craftsmen by excluding women, and that in the 1830s they even brought their ideas about the gendered division of labour with them into the Chartist movement for political reform. Robert Hall, *Voices of the People: Democracy and Chartist Political Identity, 1830-1870* (Monmouth: Merlin Press, 2007). Nor was this strategy exclusively pursued by textile workers. The practice in certain colliery districts of miners hiring their wives and daughters to share the workload and supplement the family's wages encouraged female labour force participation. However, women and children employed by their fathers and husbands in mines did not perform the same tasks as men. For instance, hewing was the preserve of adult males, while their wives and children were primarily responsible for transporting the coal. This sexual division of labour created a buffer for working-class men against competition from their womenfolk. Jane Humphries, "Protective Legislation, the Capitalist State and Working-Class Men: The Case of the 1842 Mines Regulation Act," *On Work: Historical, Comparative and Theoretical Approaches*, ed. R. E. Pahl (Oxford: Blackwell, 1988), 103-108.

[50] Berg, *Age of Manufactures*, 152-153; Sonya O. Rose, "Gender Antagonism and Class Conflict: Exclusionary Strategies of Male Trade Unionists in Nineteenth-Century Britain," *Social History* 13 (1988): 191-208.

Emerging gender ideologies associating women with domesticity, delicacy, and chastity also contributed to the curtailment of their industrial employment opportunities. Reformers railed against the coarse manners, immodesty, and immorality of the factory girl, as well as the deleterious impact of harsh factory conditions on the health of 'weaker' women. Beginning in the 1840s, new laws limited the hours and conditions of women's work in factories and industries, thereby restricting their productive role. This legislation, prompted by patriarchal as well as humanitarian concerns, construed women as vulnerable creatures in need of men's protection. Male workers and trade unionists adopted this rhetoric of dependency to demand a 'breadwinner wage,' arguing that they needed higher pay to support their wives at home, since they could not and should not perform gruelling labour.[51] Horrell and Humphries suggest that the downward trend in women's economic opportunities observed after the mid-nineteenth century might reflect in part the influence of this male-breadwinner ideology as well as the impact of protective labour legislation.[52]

A complex picture of women's work in the eighteenth and nineteenth century emerges, marked by an expansion of their labour force participation and economic opportunities in some areas and industries and a contraction in others, though ultimately by an overall downward trend. The dissertation draws on this research to suggest explanations for the varying shares of employment disputes involving female workers found in different regions and the changes observed in these shares over time. Unsurprisingly, women's employment experiences impacted their experiences of employment law.

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[51] Valenze, *First Industrial Woman*, 100-103; Sharpe, "Introduction," 10; Nigel Goose, "Working Women in Industrial England," *Women's Work in Industrial England: Regional and Local Perspectives*, ed. Nigel Goose (Hatfield: Local Population Studies, 2007), 3; Frank, *Master and Servant Law*, 68, 74-75; Berg, "What Difference," 40; Clark, *Struggle for the Breaches*, 197-247. On protective labour legislation, see also Jane Humphries, "Protective Legislation," 95-104.

[52] Horrell and Humphries, "Women's Labour Force Participation," 112.

Historical Context: Master and Servant Law

Since the pioneering work of Daphne Simon more than fifty years ago, which focused mainly on the period 1850-1875 and argued that the law was the "weapon of the small master" seeking to retain skilled labourers who might otherwise be attracted to larger firms, there has been an expansion of research on the subject, especially on these last decades of master and servant law's long existence. However, the literature is not yet extensive, and the history of the law prior to the mid-nineteenth century has only begun to be written relatively recently, thanks particularly to the work of Douglas Hay.[53] This dissertation therefore contributes to emerging knowledge about the operation of employment law in the eighteenth and early nineteenth centuries – a period when, like women's work and the British economy, it was undergoing important transformations that still require scholarly documentation and analysis.

Master and servant law was the body of statutes, judicial precepts, and social practice that governed employment relationships in Britain and its empire for over five hundred years.[54]

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[53] Daphne Simon, "Master and servant," *Democracy and the Labour Movement: Essays in Honour of Dona Torr*, ed. John Saville (London: Lawrence & Wishart, 1954), 160-198; Hay and Craven, "Introduction," 8; Douglas Hay, "England, 1562-1875," *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955,* ed. Douglas Hay and Paul Craven (Chapel Hill: The University of North Carolina Press, 2004), 61. On the nineteenth century, see: Willibald Steinmetz, "Was there a De-juridification of Individual Employment Relations in Britain?" *Private Law and Social Inequality*, ed. Willibald Steinmetz (Oxford: Oxford University Press, 2000), 265-312; Simon Deakin and Frank Wilkinson, *The Law of the Labour Market: Industrialization, Employment and Legal Evolution* (Oxford: Oxford University Press, 2005); Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century* (Cambridge: Cambridge University Press: 2001). For the earlier period, see for example: Hay, "England," 59-116; Douglas Hay, "Patronage, Paternalism, and Welfare: Masters, Workers, and Magistrates in Eighteenth-Century England," *International Labor and Working-Class History* 53 (1998): 27-48; Douglas Hay, "Master and Servant in England: Using the Law in the 18th and 19th Centuries," *Private Law and Social Inequality*, ed. Willibald Steinmetz (Oxford: Oxford University Press, 2000), 227-64.

[54] A lot of important work has also been done on master and servant law in colonial contexts, though it is beyond the scope of this dissertation. For an excellent survey of this scholarship and a comparative account of the significance and enforcement of employment law in England and the Empire, see Douglas Hay and Paul Craven, eds. *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill: The University of North Carolina Press, 2004).

Despite variations across time and in different geographical contexts, it was always characterized by three defining features: first, the notion of a private contract between employer and worker, investing masters with the authority to issue orders and servants with the obligation to obey; second, the summary enforcement of these contracts by justices of the peace, with little oversight from higher courts; and third, the punishment of errant workers, but not masters, by criminal sanctions such as whipping and imprisonment. Although it did not subject employers to the same penalties as their servants, this law nevertheless afforded important remedies to workers whose masters mistreated them or refused them their earnings. The same magistrates empowered to commit runaway servants to bridewells, for example, could also order refractory masters to pay wages owing, a relatively inexpensive measure of redress on which many men and women capitalized over the years.[55]

The origins of the English state's regulation of labour lie in fourteenth-century legislation, such as the Ordinance of Labourers (1349) and the Statute of Labourers (1350). Enacted in the aftermath of the Black Death and the substantial depopulation it wrought, these and subsequent statutes sought to limit the movement of workers and fix wage rates at a time of labour shortage and wage inflation. The Elizabethan Statute of Artificers (1562) re-codified this earlier law, retaining and amplifying its essence through clauses compelling service, penalizing its desertion, and enforcing fixed wages, for instance. Apprentices and adult workers alike fell within the scope of the legislation, the latter group divided into three main types: servants in

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[55]Hay and Craven, "Introduction,"1-2; Hay, "England," 67. Bridewells were "pioneering penal ventures," from the first eponymous hospital established in London in the sixteenth century to the institutions that subsequently opened in towns and cities across the counties over the next two hundred years and came to be called generically 'houses of correction.' Joanna Innes has shown that these "corrective prisons" were designed to "regul[ate] the disorderly poor" by punishing a wide variety of their petty infractions, including employment transgressions. Joanna Innes, "Prisons for the poor: English bridewells, 1555-1800," *Labour, Law, and Crime: An historical perspective*, ed. Francis Snyder and Douglas Hay (London: Tavistock Publications, 1987), 57, 59, 69, 107.

husbandry, who were hired by the year and usually young, unmarried, and resident in the master's household; agrarian labourers, who were hired by the day and might be older, married, or employed by several masters; and artificers, who belonged to a large range of crafts and trades including the textile and building industries. By the eighteenth century, considerable confusion existed over which kinds of workers were actually covered by the Statute of Artificers – in particular, whether men and women employed in industries not specifically mentioned in its forty-eight sections fell under its wage and service provisions. Therefore a number of statutes were enacted that explicitly brought groups such as tailors, colliers, silk weavers, glassworkers, and many others under the jurisdiction of master and servant law.[56] By 1875, some fifty-three enactments had "defined and redefined rights and duties and remedies for most if not all adult English workers and their masters." In that year, under pressure from trade union opposition to the coercive and inequitable elements of master and servant law, its penal clauses were finally repealed and employment contracts, historically founded on the subjugation of labour, were reframed as agreements between equal parties.[57]

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[56] For instance, among the most important eighteenth-century statutes extending the coverage of master and servant law were: 7 Geo. I c. 13 (1720), 13 Geo. I c. 23 (1726), 20 Geo. II c. 19 (1746).

[57] Hay, "England," 62-66; Hay and Craven, "Introduction," 8; Deakin and Wilkinson, *Law of the Labour Market*, 63. On the medieval origins of master and servant legislation, see also Robert Palmer, *English Law in the Age of the Black Death*, *1348-1381: A Transformation of Governance and Law* (Chapel Hill: University of North Carolina Press, 1993). On the coercive, exploitative, and employer-oriented elements of master and servant law, see also: Robert J. Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (Chapel Hill: University of North Carolina Press, 1991); Steinfeld, *Coercion*; Steinmetz, "Was There A De-Juridification," 265-312; Marc W. Steinberg, *England's Great Transformation: Law, Labor, and the Industrial Revolution* (Chicago: University of Chicago Press, 2016). On the struggles against the penal clauses of master and servant, and their eventual repeal, see Frank, *Master and Servant Law*; Steinberg, *England's Great Transformation,* 139-159.

One of the most distinctive features of master and servant law was its administration by lay magistrates.[58] In the fourteenth century, members of the newly emergent English gentry class were installed as justices of the peace (JPs) and tasked with enforcing state labour law in their localities.[59] In the eighteenth and early nineteenth centuries, at least outside of the metropolis and boroughs, these magistrates still tended to be drawn from the upper echelons of society. However, the commission of the peace had to be expanded over the course of this period in the face of the disinclination to act of many appointees, especially among the nobility. The ranks of justices were therefore swelled by lesser gentlemen and by clergymen, a previously untapped pool of potential candidates who proved likelier than aristocrats to take up their duties when named to the commission.[60]

Another shift in the social composition of the magistracy took place in the second quarter of the nineteenth century, when manufacturers and coal masters came to outnumber gentlemen and clerics as justices in most English and Welsh boroughs, as well as in coal- and iron-rich

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[58] The summary work of these magistrates is beginning to attract scholarly attention. See for example: Dietrich Oberwittler, "Crime and Authority in Eighteenth-Century England: Law Enforcement on the Local Level," *Historical Social Research* 15 (1990): 3-34; J. M. Beattie, *Policing and Punishment in London, 1660-1750*: *Urban Crime and the Limits of Terror* (Oxford: Oxford University Press, 2001); Gwenda Morgan and Peter Rushton, "The Magistrate, the Community and the Maintenance of an orderly Society in Eighteenth-Century England," *Historical Research* 76 (2003): 54-77; Peter King, "The Summary Courts and Social Relations in Eighteenth-Century England," *Past and Present* 183 (2004): 125-172; David Cox and Barry Godfrey, eds. *Cinderellas and Packhorses: A History of the Shropshire Magistracy* (Logaston, Hereford: Logaston Press, 2005); Faramerz Dabhoiwala, "Summary Justice in Early Modern London," *English Historical Review* 121 (2006): 796-822; Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins* (Cambridge: Cambridge University Press, 2006); Drew Gray, *Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century* (Basingstoke: Palgrave Macmillan, 2009); Drew Gray, "Justice at Its Roots: The Current State of Research Into Summary Proceedings and Petty Sessions in England," Invited Presentation Presented to *British Crime Historians Symposium 3, The Open University, Milton Keynes*, September 6-7, 2012 (2012): 1-11; Drew Gray, "Making Law in Mid-Eighteenth Century England: Legal Statutes and their Application in the Justicing Notebook of Phillip Ward of Stoke Doyle," *The Journal of Legal History* 34 (2013): 211-233; Greg T. Smith, ed. *Summary Justice in the City: A Selection of Cases Heard at the Guildhall Justice Room, 1752-1781* (London Record Society: The Boydell Press, 2013).
[59] Hay and Craven, "Introduction,"5; Hay, "England," 62; Palmer, *English Law*, 14-27.
[60] Gray, "Justice at its Roots," 3-4; Landau, *Justices*, 140-143.

areas such as the West Riding of Yorkshire, Lancashire, and the Black Country. Since these magistrates were employers in industry, they were often perceived to be biased in their administration of justice. David Philips observes that "on the test of the legal maxim that no man should be judge in his own cause, or one in which he had an interest, the Black Country magistrates would fail badly." Christopher Frank notes that newspapers frequently referred to magistrates in Lancashire, Durham, and Northumberland as "Cotton Lord Justices" or "Coal King Justices." Marc Steinberg has shown that in Hanley, a town in the Staffordshire Potteries, workers viewed master and servant prosecutions as a "thinly veiled exercise in class control." The local paper scoffed that far from being blind, justice as doled out by the Hanley borough magistrates – half of whom were in the pottery industry – "'has its eyes open, though it does not see straight, but looks obliquely, on the side of capital.'" These reputations for partiality and corruption among borough magistrates were not unearned, either. Frank cites the case of a magistrate and coal master in Warwickshire who sentenced three of his own workers to prison without allowing them to speak in their defence.[61]

In London, the picture was even more complex. Magistrates ran the gamut from civic elites like the Lord Mayor and aldermen; to prominent merchants and tradesmen; to professionals such as the Fielding brothers, who founded the Bow Street Runners; to the lower

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[61] Frank, *Master and Servant Law*, 82-83; David Philips, "The Black Country Magistracy, 1835-1860: A Changing Elite and the Exercise of Its Power," *Midlands History* 3 (1976): 161-185, quote on 181; Steinberg, *England's Great Transformation*, 62-65. On the nineteenth-century magistracy, see also: D. C. Woods, "The Operation of the Master and Servants Act in the Black Country, 1858-1875," *Midland History* 7 (1982): 93-115; D. C. Woods, "The Borough Magistracy and the Authority Structure of Black Country Towns, 1860-1900," *West Midlands Studies* 12 (1979): 93-115; Roger Swift, "The English Urban Magistracy and the Administration of Justice During the Early Nineteenth Century: Wolverhampton, 1815-1860," *Midlands History* 3 (1976): 161-190; Helen Johnston, "The Shropshire Magistracy and Local Imprisonment: Networks of Power in the Nineteenth Century," *Midland History* 30 (2005): 67-91; Thomas Sweeney, "The Exclusion and Practice of Summary Jurisdiction in England, c. 1790-1860," (PhD Dissertation, Cambridge University, 1985); David Foster, "The Social and Political Composition of the Lancashire Magistracy, 1821-1851," (PhD Dissertation, University of Lancaster, 1972).

status, much-maligned 'trading justices,' so-called because they allegedly used their office to extract profits in the form of fees, fines, and bribes. It is clear, though, that even outside London, JPs originated from a relatively wide variety of backgrounds and did not conform to a single type.[62]

From its medieval origins, the jurisdictional purview of magistrates expanded over time, through statutory enactments and custom, to encompass a remarkable range of criminal, civil, and administrative matters. By the early eighteenth century, Norma Landau asserts that the justices were "virtually independent." The central government neither compelled them to act once they were appointed to the commission of the peace for their counties, nor closely monitored their behaviour if they did choose to perform their duties. They were endowed with considerable summary powers when they acted alone, which included making judgments in master and servant complaints. Furthermore, two magistrates sitting together also enjoyed extensive administrative authority in their neighbourhoods. The need to associate with other justices in order to exercise these powers of local government led JPs to create 'petty sessions.' These were regular meetings of magistrates within divisions – the smaller, more manageable areas into which late-sixteenth and early-seventeenth-century JPs had partitioned their counties. In addition to their administrative work, justices also dealt with disputes at petty sessions, including master and servant conflicts. In cases that fell outside the scope of their summary jurisdiction, magistrates could make committals for trial at Quarter Sessions.[63]

The wide-ranging, largely unsupervised powers of the justices could lead to confusion and corruption in the exercise of their duties, including the administration of master and servant

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[62] Smith, *Summary Justice*, xii-xiv; Gray, "Justice at its Roots," 3-4; Norma Landau, "The Trading Justice's Trade," *Law, Crime and English Society: 1660-1840,* ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 43-70.
[63] Smith, *Summary Justice*, xi; Landau, *Justices*, 8, 9, 23, 27, 28.

law. Magistrates, most of whom had no formal legal training, were often imperfectly aware of the current state of the law (though most active ones had clerks with legal training). There was not a systematic attempt made to provide complete compendiums of all the statutes to justices in every corner of the realm until the end of the eighteenth century, and even then the scale of the effort fell noticeably short. Statutes were moreover cumulative, sometimes overlapping or incomplete in their coverage, and subject to interpretation and adaptation by case law. They often allowed JPs nearly limitless discretion.[64]

If and when magistrates erred in their judicial decisions, either through lack of knowledge, misinformation, or spite, they could only be penalized by the four judges of King's Bench. Hay argues that these high court judges were very tolerant of the justices' "ignorant or mistaken, but also abusive and even clearly malicious, conduct."[65] JPs were rarely punished for their bad behaviour, in part because King's Bench could not afford to antagonize them with too frequent, harsh, or embarrassing rebukes, for fear that they would then abandon their unpaid magisterial work and precipitate the disintegration of the legal edifice built on their backs. The high court judges were also reluctant to impugn the reputations of fellow gentlemen. Hay suggests, however, that borough magistrates, who were not protected by wealth or high social status the way gentleman justices were, probably ran a greater risk of being prosecuted for

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[64] Hay, "England," 66-67, 86; Hay and Craven, "Introduction,"11; Simon Devereaux, "The Promulgation of the Statutes in Late Hanoverian Britain," *The British and Their Laws in the Eighteenth Century,* ed. David Lemmings (Woodbridge, Suffolk: Boydell Press, 2005), 81.

[65] Douglas Hay, "Dread of the Crown Office: The English Magistracy and King's Bench, 1740-1800," *Law, Crime and English Society: 1660-1840*, ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 19, 21.

misdemeanours in office. Still, the generally minimal oversight of JPs could and did lead to occasional abuses of power.[66]

In theory, magistrates were supposed to be impartial moderators of the disputes that arose in their communities – using their influence as natural leaders and authority figures to mediate or arbitrate these conflicts whenever possible; adjudicating and doling out punishments, to the extent that their summary powers allowed, when conciliatory intercession failed or was impossible.[67] In practice, the impartiality of the justice they administered varied considerably from one JP to another. Peter King points out that in spite of contemporary rhetoric about the protective and paternalistic role of the magistrates, individual JPs could be – and often were – domineering, tyrannical, biased, or venal. He cautions that eighteenth-century summary courts were not "neutral arbitrational tribunals" that treated the "propertied and unpropertied" alike. Yet he also argues that people of nearly every class could and did make use of these courts. Therefore, he suggests that the labouring poor were "not infrequently enabled" to "triangulate" – that is, to play off the "relatively distanced justice offered by most rural magistrates" against the interests of the middling sort, including their employers.[68]

However, rural JPs were not necessarily "distanced" from, and consequently sympathetic to the poor. As landowners, their interests might conflict just as much as did those of the middling sort with those of the lower orders. Hay has discussed the case of a Norfolk magistrate named Hoseason, for instance, who committed his own farm servant to the house of correction for a month of hard labour for refusing to cut short his rest time at the demand of Hoseason's

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[66] Hay, "Dread," 41-44, 48. For an example of a particularly corrupt magistrate, John Gough, see Hay, "Dread," 33-41. On the corruption of the 'trading' justices of eighteenth-century metropolitan London, see Landau, "The Trading Justice's Trade," 43-70.
[67] King, "Summary Courts," 147-156; Smith, *Summary Justice*, xi.
[68] King, "Summary Courts, 160-162.

bailiff.[69] This clearly violated the stipulation that justices "ought not to execute their office, in their own case; but cause the offenders to be convened or carried before some other justice, or desire the aid of some other justice being present."[70] It was not only rural JPs who could be biased in their administration of summary justice, either. As we have seen, the manufacturers and coal masters who came to dominate the magisterial bench in industrial areas in the nineteenth century were hardly impartial arbiters in employment disputes that often involved their own or their colleagues' workers.[71]

Although not all magistrates were corrupt or biased against the poor, and some were even sympathetic to their plight, the law of master and servant itself was built in the interest of employers, and so workers were always at a disadvantage. From its inception, the overall aim of employment legislation was to make the supply and performance of labour cheaper and more reliable. The law was crucial in maintaining capital's control over English workers. Scholars have therefore recently begun emphasizing that these workers, while certainly not enslaved, were also not "free." They were coerced into serving by non-pecuniary legal devices such as penal sanctions and the erosion of common rights and other alternative forms of livelihood. [72] As Robert Steinfeld remarks, contemporaries strongly believed that workers needed to be kept to

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[69] *R. v. Hoseason* (1811), 14 East 605; Hay, "Master and Servant," 245; Hay, "Patronage, Paternalism, and Welfare," 40-44.
[70] Richard Burn, *The Justice of the Peace, and Parish Officer*, 1st ed., Vol. 2 (London: Henry Lintot, 1755), 83.
[71] Frank, *Master and Servant*, 82-83; Philips, "Black Country Magistracy,"161-185; Steinberg, *England's Great Transformation*, 62-65.
[72] Hay and Craven, "Introduction," 26; Marc W. Steinberg, "Capitalist Development, the Labor Process, and the Law," *American Journal of Sociology* 109 (2003): 446; Steinfeld, *Coercion*, 9; Hay and Craven, "Introduction," 28. Steinberg has recently presented three case studies of the ways in which industrial capitalists used the law as a tool of labour discipline. See Steinberg, *England's Great Transformation*, 4, 51-138.

their agreements if free labour markets were to function successfully, the "dull compulsion of economic relations" being deemed an insufficient incentive.[73]

The legal obligation to serve was partly rooted in the much harsher punishments that workers suffered for their breaches of contract than did masters. Servants could be imprisoned for the employment offences that they committed, when, for the most part, masters could not. Even when workers were not actually sentenced to the house of correction, the mere possibility of this outcome could influence proceedings. For instance, Hay observes that masters' complaints were often 'settled' when absconded servants were coerced into returning to their places under threat of incarceration.[74] Steinfeld speculates that penal sanctions might also have enabled English employers to pay their workers less, by substituting for efficiency wages – that is, wages higher than market value intended to reduce shirking, turnover, and lack of productivity.[75] In a Working Paper for the National Bureau of Economic research, Suresh Naidu and Noam Yuchtman confirm this supposition. They demonstrate through the use of economic modelling that the threat of criminal sanctions for breach of contract served as an alternative to paying higher wages in situations where labour was in high demand and could otherwise have bid up wages. After the 1875 repeal of the penal clauses of master and servant, the average wages in counties with high prosecution rates and the responsiveness of wages to the demand for workers both increased.[76]

Furthermore, the real benefits that servants could obtain from master and servant law were still likely advantageous to society's ruling interests. As Hay has argued in another context,

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[73] Steinfeld, *Coercion*, 9, 46.
[74] Hay and Craven, "Introduction," 2, 26; Hay, "Patronage," 38.
[75] Steinfeld, *Coercion*, 69.
[76] Suresh Naidu and Noam Yuchtman, "Coercive Contract Enforcement: Law and the Labor Market in 19th Century Industrial Britain." National Bureau of Economic Research Working Paper 17051 (May 2011): 1-2, 37.

law is ideology and an "ideology endures not by being wholly enforced and rigidly defined."[77] Since master and servant law aimed at the subordination of labour, some concessions to servants' interests would bolster its legitimacy in their eyes and diminish their more strenuous objections to its biases. Hay notes that remedies for workers under master and servant law were an important factor in its public perception.[78] Steinberg makes a similar point, stating that the success of servants who pressed claims against employers in cases of clear contract violation probably helped reinforce the legal hegemony of local capitalists. These victories, small in number compared with the greater rate of prosecutions brought by masters, legitimated the asymmetrical employment relationship.[79]

Peter King, on the other hand, has a dissenting perspective. He acknowledges that there may be a "grain of truth" in the contention that magistrates acting as mediators and occasionally upholding the rights of the poor were thereby legitimizing their credentials as paternalists and reinforcing deference to themselves and the law. However, he maintains that this argument is not well supported by the small evidence we have of the opinions of the poor about their experiences with JPs. King asserts that these "few surviving documents… contain many elements of scepticism, precious few signs of deference and often an acute sense that, although they were entitled to…justice…they very rarely received it."[80]

It is true that evidence can be found of disillusionment with magistrates. For instance, at a petty sessions meeting for the Ashford division in the county of Kent, a butcher named Curtis – whose complaint against another butcher named Kite for stealing some ropes and pins out of his

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[77] Douglas Hay, "Property, Authority and the Criminal Law," *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, eds. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, Cal Winslow (New York: Pantheon Books, 1975), 55.
[78] Hay, "England," 61.
[79] Steinberg, "Capitalist Development," 480.
[80] King, "Summary Courts," 163.

slaughterhouse had been dismissed – was conveyed to the Canterbury House of Correction for "misbehaviour in insulting ye Justices…& saying they had not done him Justice."[81]

Yet, as King himself argues, men and women from nearly every class continued to turn to the summary courts for redress. Sometimes the same worker even approached a magistrate on multiple occasions with master and servant complaints. For example, in Kent the carpenter Nicholas Lad came twice before the JP William Brockman seeking unpaid wages.[82] In other instances, several workers would at different times bring grievances against the same employer. Between 1847 and 1852, Goodwin Honor, John Hooper, and John Cooper all charged their mistress Dinah Higgs at the Bicester petty sessions with refusing to pay them wages – for agricultural labour, reaping wheat and picking peas, and sawing, respectively. The justice Reverend Richard Pretyman was present at the sessions on each of these occasions, invariably accompanied by either Captain Style or Reverend Robert Bullock-Marsham and once by both, so that there was continuity on the magisterial bench across the three cases. In each of them, the magistrates ordered Dinah Higgs to pay the wages owing and the costs of the proceedings.[83] It is possible that her servants were aware of each other's successes in recovering their wages, and so were encouraged to bring their complaints before these accommodating magistrates. Some JPs, perhaps including these men, had a reputation for being friendly toward workers in master and servant disputes.

In some situations and with some justices, then, workers obviously felt they had a chance of receiving compensation for their masters' breaches – an expectation borne out by actual

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[81] KHLC, U951/O4, Justice's Diary Kept by Sir Wyndham Knatchbull, July 8, 1738, p. 41.
[82] British Library (BL), MSS Add. 42598, Memorandum Book of Business Transacted as a JP by William Brockman, p. 50.
[83] Oxfordshire History Centre (OHC), Trum I/4, Bicester Magistrates' Meetings Rough Minute Books, p. 68, 137; OHC, Trum I/5, Bicester Minute Books, p. 314.

experience often enough that it continued to be acted upon. It is difficult to believe that servants would keep approaching magistrates with their grievances if they thought that the law held no remedies for them. Therefore, it does seem that a key ingredient in the longevity of the master and servant legal regime was the perception – shared to some extent among all classes – that it was a legitimately impartial tool for the resolution of labour disputes. King maintains that the poor used the summary courts pragmatically. Their occasional successes encouraged them to keep bringing complaints, but did not convince them of the law's legitimacy.[84] However, it is worth noting that working class opposition to master and servant law, culminating in the repeal of its penal clauses, increased over the course of the nineteenth century as the law became more and more blatantly inequitable.[85] This growing resentment and resistance suggests that the law had appeared more legitimate to the poor when there was more pretence at equality.

As Hay has shown, master and servant law grew more biased in favour of employers from the mid-eighteenth century, and especially in the early nineteenth century – a trend that continued almost until the end of its long run in 1875. Between 1720 and 1792, ten Parliamentary acts introduced or increased the use of imprisonment as a punishment for misbehaving and runaway workers, in some cases extending the length of sentences from one month to two or three, and making new provisions for the flogging and forced hard labour of incarcerated workers.[86] In the wake of the new statutes, justices sentenced workers to longer terms in houses of correction. At the end of the eighteenth century the number of cells in these institutions increased, allowing for the accommodation of a greater number of convicted

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[84] King, "Summary Courts," 165.
[85] Frank, *Master and Servant*, 8-9, 12; Hay, "England," 115-116.
[86] 9 Geo. I c. 27 (1722); 12 Geo. I c. 34 (1725); 13 Geo. I c. 23 (1726); 2 Geo. II c. 36 (1728); 13 Geo. II c. 8 (1739); 20 Geo. II c. 19 (1746); 22 Geo. II c. 27 (1748); 6 Geo. III c. 25 (1766); 17 Geo. III c. 56 (1777); 32 Geo. III c. 57 (1792).

servants. The hard labour imposed by the eighteenth-century acts became even more strenuous with the nineteenth-century development of loathed treadmills and cranks in the bridewells. Harsher, longer, and more frequent imprisonment was just one symptom of the "increasingly criminal…character" of master and servant law. By the early nineteenth century, accused servants – referred to as "prisoners" like the defendants in weightier criminal cases – often appeared in the summary courts on arrest warrants in the custody of the newly-created police, while masters were merely summoned to attend. After 1847, petty sessions were transformed with the statutory expansion of magistrates' summary jurisdiction over larcenies and other crimes, and came increasingly to be called 'police courts.'[87] Willibald Steinmetz also remarks that "unequal treatment" of labour, a "deeply engrained feature" of master and servant since the sixteenth century at least, worsened in the nineteenth century. Employment law was shorn of its trappings of paternalism. Servants appeared far more often as defendants in disputes than they had the century before, and even when they initiated prosecutions the courtroom tactics of cross-examining counsel put them on the defensive.[88]

High court doctrine also became more inimical to labour. Deakin and Wilkinson show that older notions of reciprocity between masters and servants were being jettisoned. In the late eighteenth and early nineteenth centuries, the judges reversed traditional policy by ruling that masters were not bound to maintain sick or injured servants or to pay for their medical care. The notion of reciprocal obligations between master and servant – to provide work, and to perform it, respectively – was invoked only to justify disciplinary actions against runaway servants. The high courts in this period refused to recognize the principle of mutuality as a legitimate basis for wage claims by workers whose masters had failed to employ them. Servants were bound to

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[87] Hay, "England," 82-83, 106-107, 109; Hay, "Master and Servant," 231, 247.
[88] Steinmetz, "De-juridification," 265, 276.

masters, even when there was no work available, by long-term hirings, extended periods between payments, and requirements of lengthy notices to quit.[89]

One of the most important cases in this transformation of the law was *Spain v. Arnott* (1817), wherein Lord Chief Justice Ellenborough strongly endorsed the lapsed doctrine of the 'entire contract,' stipulating that servants forfeited all of their wages if they failed to complete the full term of service. Ellenborough also seemed to sanction the master's ability to dismiss a disobedient worker without having recourse to a magistrate. This interpretation reversed a long line of decisions upholding the necessity of adjudication in these situations, a position most recently reaffirmed by Ellenborough's predecessor Lord Kenyon. Hay asserts that *Spain v. Arnott* became "the leading authority for the servant's subordination."[90]

Gender and Employment Law

While scholars have been diligent in exploring the class bias of English master and servant law, they have, unfortunately, been far less attentive to gender.[91] Judith Bennett's work

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[89] Deakin and Wilkinson, *Law of the Labour Market*, 65-71.

[90] *Spain v. Arnott* (1817), 2 Stark. 256, 171 Eng. Rep. 638; Hay, "England,"112-114. See Chapter One for a lengthier discussion of the high court doctrine of dismissal.

[91] There are some notable exceptions to this in the literature on colonial master and servant law. For instance, on the experiences of apprenticed women in the Caribbean after the abolition of slavery, see Sheena Boa, "Experiences of Women Estate Workers During the Apprenticeship Period in St. Vincent, 1834-38: The Transition from Slavery To Freedom," *Women's History Review* 10 (2001): 381-408 and Henrice Altink, "Slavery By Another Name: Apprenticed Women in Jamaican Workhouses in the Period 1834-81," *Social History* 26 (2001): 40-59. On men's and women's prosecution for breaches of labour ordinances by British magistrates on Fiji plantations, see Norman Etherington, "The Gendering of Indirect Rule: Criminal Law and Colonial Fiji, 1875-1900," *The Journal of Pacific History* 31 (1996): 42-57. On women and indentured labour in colonial Fiji, see John D. Kelly, "'Coolie' as a Labour Commodity: Race, Sex, and European Dignity in Colonial Fiji," *The Journal of Peasant Studies* 19 (2008): 246-267. On gender and emancipation, see Pamela Scully and Diana Paton, eds. *Gender and Slave Emancipation in the Atlantic World* (Durham: Duke University Press, 2005), especially Bridget Brereton, "Family Strategies, Gender, and the Shift to Wage Labour in the British Caribbean," 143-161.On gender and punishment in the transition from slavery to 'free' labour see Diana Paton, *No Bond*

on late medieval England is an exception. She has shown that the provisions for compulsory service set forth in the Ordinance of Labourers (1349) and Statute of Labourers (1351) seem to have been imposed more often on women than on men, because the former were more economically vulnerable and more likely to comply when pressed into employment. In fact, Bennett argues that compulsory service was meant to target women – especially young, single women – from the first formulations of its provisions.[92]

Yet historians of the eighteenth and nineteenth centuries have for the most part ignored or under-analysed gender. Some gesture to the significance of gender bias in the creation and enforcement of the law, without thoroughly exploring its implications. King, for instance, asserts that gender relations are expressed in and partially shaped by the summary courts, yet consigns them to a "range of other important issues" that historians might explore elsewhere.[93] Others incorporate a small amount of gendered analysis, without taking it as their principal subject. Hay has provided a breakdown by sex of incarceration rates in Gloucestershire and Staffordshire houses of correction. He has also pointed to several significant judicial decisions stigmatizing servants who bore children out of wedlock, as exceptions to the generally "gender-neutral" legislation and case law. However, these topics are not the main focus of his research.[94]

In his work on the way that employers in specific industries and places have used master and servant law as a tool of labour discipline, Marc Steinberg aims to incorporate some gender analysis. He notes that the majority of workers who were prosecuted in his case studies – by pottery manufacturers in Hanley, fishing trawler owners in Hull, and needle manufacturers and

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But the Law: Punishment, Race, and Gender in Jamaican State Formation, 1780-1870 (Durham: Duke University Press, 2004).

[92] Bennett, "Compulsory Service," 10, 28-41, 43.

[93] King, "Summary Courts," 130.

[94] Hay, "England," 66, 95-96.

farmers in Redditch – were male. He suggests that these men might have been targeted for flouting Victorian notions of respectable masculinity. For instance, the Hanley civic elite, in prosecuting skilled male pottery workers, might have been attempting to "tame" a certain type of working-class masculinity that "defied labour discipline." Yet he cannot find much support for his theory in newspaper and archival sources. He claims that the "discourse in court cases focuses on work and its neglect, misconduct, and malfeasance, but usually not in gendered terms." He offers three possible explanations for this "absence": that "acceptable gendered performances at work were so self-evident" to employers and magistrates that they did not need to be articulated; that "gender transgressions" were "less immediately germane" in the context of courts than the "'facts'" of legal violations; or that capitalists were "less concerned with policing the gendered respectability of their workers" than they were with securing any form of available labour.[95]

It is admirable that Steinberg makes an effort to include gender in his work.[96] However, his understanding of its role in master and servant prosecutions is quite narrow. He seems to assume that the only way transgressions might be gendered is if they contravened ideals of normative masculine or feminine behaviour. When he cannot find explicit evidence of workers being prosecuted for 'unmanly' or 'unwomanly' conduct in their work, he finds it necessary to explain this "absence" of "gendered terms" in court discourse. Yet I argue that gender shaped everything from the work that men and women did, to the misbehaviour they were charged with,

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[95] Steinberg, *England's Great Transformation*, 44, 49-50, 69-72; Steinberg, "Capitalist Development," 445, 478;

[96] Steinberg also argues that the struggle for labour law reform involved a "complex gender politics" in which unions drew on adult male workers' claims of "masculine independence," as well as a "popular political economy" positing workers' rights over their own 'property' – that is, their labour – to fight for a "new liberal legal order" in which the courts and the state generally were more distanced from relations between labour and capital. Steinberg, *England's Great Transformation*, 165-166.

to their treatment by magistrates, whether or not employers and justices believed they were policing gendered respectability. A potter might well have been prosecuted for leaving his work because his master was upset about the breach of contract, not the supposed breach of masculine propriety, and yet gender would still have influenced this case. It would already have played a part in determining why that potter was a man instead of a woman, as well as influencing the creation of the statute under which the potter was charged. Gender would also have an impact on the way the presiding justice sentenced this hypothetical potter, if he was convicted. Steinberg's limited treatment of gender ignores the more subtle ways in which it could be implicated in the administration of master and servant law. It is also quite a minor part of his study.

The recent work of Carolyn Steedman has put female workers at the forefront of analysis – specifically domestic servants, who were "ubiquitous" in the eighteenth century.[97] Steedman maintains that these young women, who served in order to gain settlements and "flitt[ed] as soon as a mistress shouted at them," used all the means open to them in a deeply unequal society to express "their resentments in inventive and sometimes terrifying ways."[98] One of these means

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[97] Carolyn Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge: Cambridge University Press, 2010), 38. On English domestic servants in this period, see: D. M. Stuart, *The English Abigail* (London: Macmillan, 1946); J. Jean Hecht, *The Domestic Service Class in Eighteenth-Century England* (London: Routledge and Kegan Paul, 1956); Dorothy Marshall, *The English Domestic Servant in History* (London: London Historical Association, 1968); Theresa M. McBride, *The Domestic Revolution: The Modernisation of Household Service in England and France, 1820-1920* (London: Croom Helm, 1976); Edward Higgs, "Domestic Servants and Households in Victorian England," *Social History* 8 (1983): 201-210; D. A. Kent, "Ubiquitous but Invisible: Female Domestic Servants in Mid-Eighteenth Century London," *History Workshop Journal* 28 (1989): 111-128; Bridget Hill, *Servants: English Domestics in the Eighteenth Century* (Oxford: Clarendon, 1996); Leonard Schwarz, "English Servants and Their Employers During the Eighteenth and Nineteenth Centuries," *Economic History Review* 52 (1999): 236-256; Tim Meldrum, *Domestic Service and Gender, 1660-1750: Life and Work in the London Household* (New York: Pearson Education, 2000); Kristina Straub, *Domestic Affairs: Intimacy, Eroticism, and Violence between Servants and Masters in Eighteenth-Century Britain* (Baltimore: The John Hopkins University Press, 2009).

[98] Steedman, *Labours Lost*, 9. See also Carolyn Steedman, "A Boiling Copper and Some Arsenic: Servants, Childcare, and Class Consciousness in Late Eighteenth-Century England." *Critical Inquiry* 34 (2007): 36-77. Some domestic servants committed horrible crimes, such as boiling young toddlers alive,

was to apply to magistrates for legal remedies when problems arose with their employers. Steedman contends that here in the summary courts, despite the inequity of the legal regime, domestic servants did sometimes "find something useful – occasionally got something – out of [the] process."[99]

However, the overall thrust of Steedman's argument has less to do with the experience of female workers under employment law specifically, and more to do with a reinterpretation of "the making of the modern labour force," on which the law can shed light. Labour law, which intersected with poor law to impact the lives of working people, helped to construct, and provide a lens for understanding and interpreting, social relations and identity. For instance, the law factored into domestic servants' own notions about the "rights and wrongs of [their] work situations." It also contributed to the transformative conception of the self that was emerging in this period – one that posited personhood as potential property, "as another kind of thing that could be owned." An older Lockean school of thought attributed a servant's labour power to his or her master – the servant standing in as an extension of, an appendage to, the master, exercising the capacity to work on his or her behalf. However, Steedman argues that the debates in the second half of the eighteenth century surrounding the implementation of a tax on man servants and maids situated these skills in the men and women who were actually labouring. Servants achieved personhood through the law's "oblique recognition" of their ability to work. Ultimately, Steedman is making a case for including domestic servants, who made up a large part of the eighteenth-century workforce and were indeed thought of by their contemporaries as *workers*, in

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in reaction to the conditions of their labour and the class relationship – these were some of the "terrifying" ways that they expressed resentments.

[99] Steedman, *Labours Lost*, 178, 181.

the history of the making of the English working class, from which she argues they have hitherto been excluded.[100]

This dissertation takes a unique approach by focusing on the gendered theory and application of master and servant law – a subject that has been neglected or treated peripherally in the literature thus far, but which deserves as thorough an examination as does a category of analysis such as class. As Joan Scott observes in her seminal essay, interest in gender as an analytic category only materialized relatively recently, in the late twentieth century. Since then, however, feminist historians have begun to develop and articulate it, and to apply it assiduously in their work. This dissertation follows in that tradition, taking up Scott's proposition that gender is the "social organization of sexual difference" – not "fixed and natural physical differences between men and women," but rather "the knowledge that establishes meanings for bodily differences." Scott reminds us that gender must be examined "concretely and in context" and considered as a "historical phenomenon, produced, reproduced, and transformed in different situations and over time."[101] I analyse gender in the context of evolving eighteenth- and nineteenth-century English employment law.

This dissertation will demonstrate that gender affected every aspect of master and servant law. It influenced both the statutes and the high court cases of record that together constituted the

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[100] Steedman, *Labours Lost*, 14, 16-17, 30, 171-172, 240. See also Susan E. Brown, "Assessing Men and Maids: The Female Servant Tax and Meanings of Productive Labour in Late-Eighteenth-Century Britain," *Left History* 12 (2007): 11-32. In her examination of the maidservant tax, Brown argues that the legislation and the economic beliefs underwriting it defined domestic service and household work as unproductive labour and associated it with femininity, while productivity was associated with masculinity. Since the tax laws defined servants based on the actual labour they performed, resisters looking to escape payment were able to contest the labelling of workers as domestic servants (and therefore unproductive, taxable entities) by pointing to the actual labour and household management they performed. This allowed for a "popular redefinition of work and productivity." 16, 18.

[101] Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *The American Historical Review* 91 (1986): 1066; Joan Wallach Scott, *Gender and the Politics of History* rev. ed. (New York: Columbia University Press, 1999), 2, 6; Clark, *Struggle*, 2.

law's blueprints. It also impacted the day-to-day administration of the law in the summary courts, and helped shape the ways in which this changed over time. The dissertation reveals a theoretical tension between femininity and employment, expressed in the legislation and case law. The reality of women working made this tension less pronounced in practice, but there were nevertheless differences in how the law was applied to female and male servants. Moreover, the types of complaints that workers made, and the accusations that their masters made against them, were gendered. Women workers were proportionately more likely than men to be involved in conflicts with their employers that did not technically fall under the purview of the master and servant statutes, such as assaults and thefts. They made up a decreasing share of all workers in employment disputes over the course of the period. Yet master and servant law also seems to have been used, in possible conjunction with other legal measures, to target women in 'feminized' occupations at the vanguard of industrial transformation, such as textile factory operatives, and bind them to their work. Employment law managed to both exclude and exploit female servants. The emerging picture is complex, and this dissertation can only begin to explore these developments and suggest fruitful paths for further research. It is clear, though, that gender is a vital element in the history of master and servant law, which the scholarship needs to incorporate seriously.

Sources and Methodology

This dissertation analyses the gendered experience of master and servant law in England from the end of the seventeenth to the middle of the nineteenth century. The long time frame captures the momentous changes that were taking place in women's work, the economy, and the law. It is also partly determined by the nature of the sources, ending as it does before the

introduction of annual parliamentary returns of summary convictions in 1858.[102] The decision to concentrate on the pre-statistical period is an attempt to place manageable limits on the amount of data to be analysed. The exclusive focus on England is likewise dictated by considerations of practicality. Prior to the nineteenth century, when all British jurisdictions were united under the same body of legislation, employment law in Ireland and Scotland was different from the version prevailing in England. Ireland had its own statutes, with distinctive provisions and penal clauses. Scotland not only had its own statutes, but also a unique judicial system that included sheriff and burgh courts in addition to magisterial summary courts.[103] It would not have been feasible to include Scotland or Ireland in this project because of these substantial differences. For the same reason, it is also beyond the scope of this dissertation to consider the colonial context. However, in the future, valuable comparative work could be undertaken contrasting the role of gender in master and servant law in England, Scotland, Ireland, and the colonies. Similarly, the study could be extended to 1875 and the final repeal of employment law's penal clauses by making use of the annual statistics published in the last eighteen years of the law's long run.

The source base for this dissertation is principally made up of accounts of employment disputes found in the records of summary courts and bridewells, supplemented by statutes, reported cases in the high courts, and advice manuals for justices – all of which laid down the parameters within which the law was applied by magistrates. The core of the dissertation consists of 64 sources.[104] Twenty-nine of these are petty sessions records, twenty-five are justicing notebooks, nine are records of inmates in houses of corrections, and one is a Quarter Sessions

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[102] Hay, "Master and Servant," 232.
[103] Hay and Craven, "Introduction," 2 n. 5.
[104] Douglas Hay generously shared with me his digital summaries of master and servant data compiled from the justicing notebook of Macclesfield magistrate Thomas Allen and from the registers of Northleach and Littledean prisons, as well as his photocopies of the notebooks of Devereux Edgar, Sir Gervase Clifton, Henry Yate, Richard Jee, and the Atherstone petty sessions minute books.

record.[105] Figure 1.1 indicates the chronological distribution of these sources. Magistrates' personal notebooks cover most of the eighteenth century, while petty sessions records are more frequent in the nineteenth century, when these meetings were becoming more regularized. The house of corrections calendars and registers that I have consulted mostly date from the decades around the turn of the century, when the use of imprisonment was increasing.

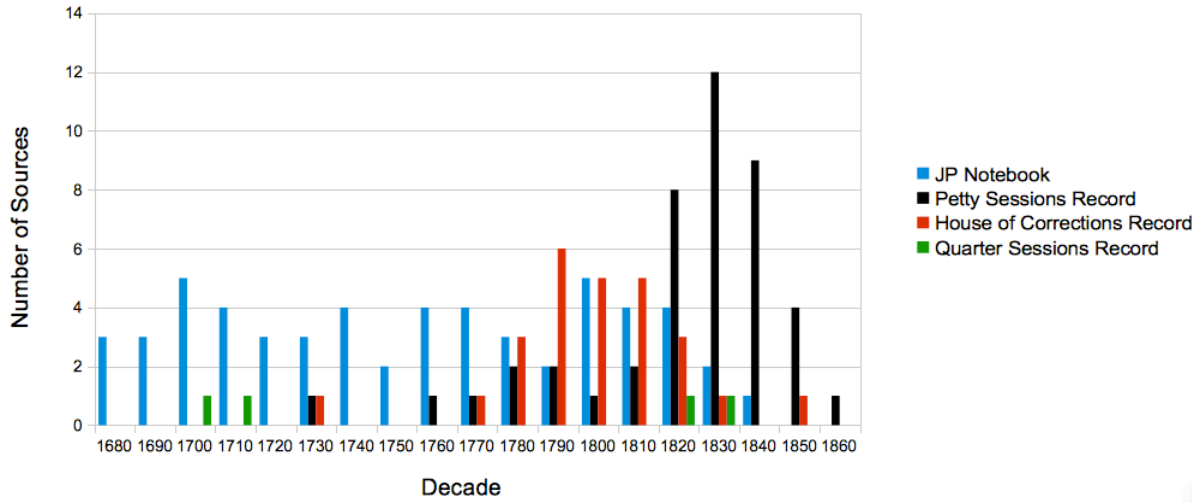

Figure 1.1: Number of Each Type of Source Per Decade

The 64 sources have been drawn from 17 English counties in total. Figure 1.2 shows the numbers and types of source found in each county, while Figure 1.3 gives the chronological breakdown of this information. In part, the geographic scope of the dissertation has been dictated by the survival and accessibility of records. It is also meant to encompass a broad range of

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[105] Quarter Sessions were formal criminal courts where juries tried offences that could not be dealt with summarily. They took place four times a year in each county. All of the JPs in a county – or those who troubled to attend – sat together in judgement on lesser crimes, while the most serious offences – such as murder – were heard biannually at Assizes by the high court judges travelling on circuits through the counties. J. M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford: Clarendon Press, 1986), 5. Master and servant disputes fell under the summary jurisdiction of magistrates and were less likely to be tried at Quarter Sessions, but occasionally they did appear there. Cases of theft involving workers also turned up at Quarter Sessions, since they were technically not supposed to be tried summarily – though they were nonetheless, as we shall see in Chapter Three.

economic regions, from principally agricultural areas, such as West Lavington in Wiltshire; to areas of textile manufacture, both domestic and factory, such as Guilsborough, Devizes, and Macclesfield; to more industrial areas, such as the Staffordshire potteries and Atherstone in Warwickshire.[106] I have not used any sources from London because the metropolis was exceptional in its size, level of petty offending, occupational patterns, and system of summary justice.[107] It merits detailed study in its own right, which cannot be adequately undertaken in this dissertation without risking the project becoming too unmanageable.

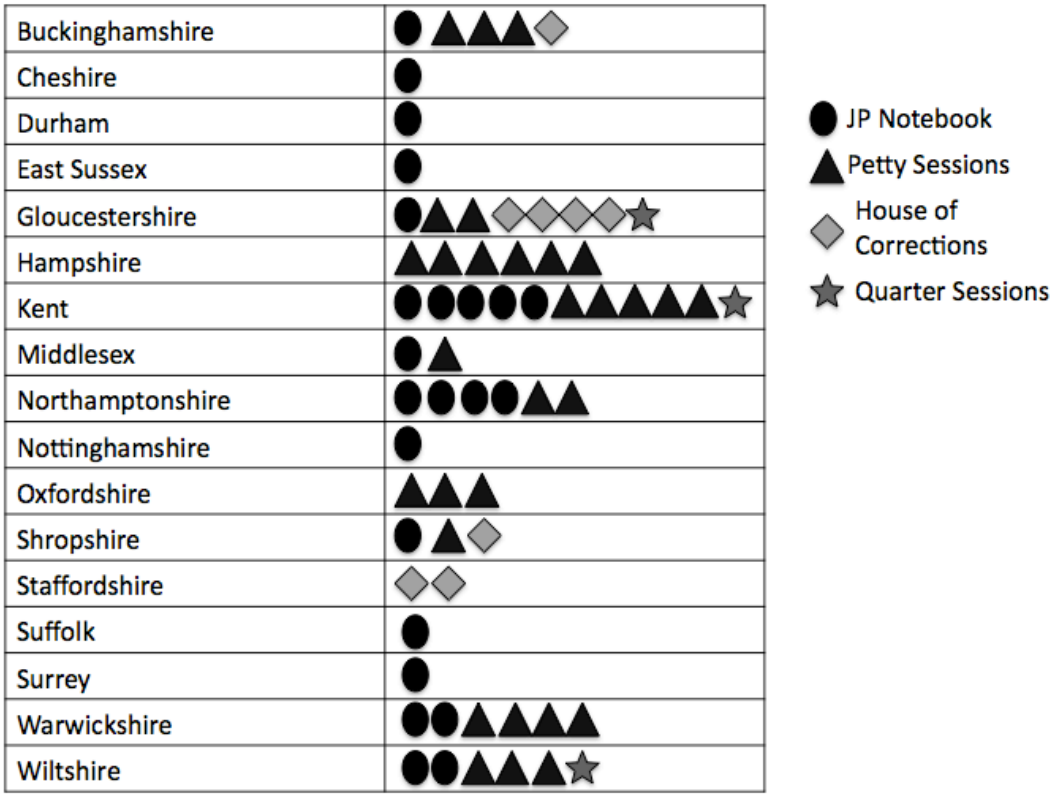

Figure 1.2: Type of Source Found in Each County

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[106] Hay, "England," 97-98.
[107] Gray, *Crime, Prosecution, and Social Relations*, 7-17; Beattie, *Policing and Punishment*, 4-6, 77-113; Smith, *Summary Justice*, xi-xxx; Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660-1725* (Cambridge: Cambridge University Press, 1991), 90-91.

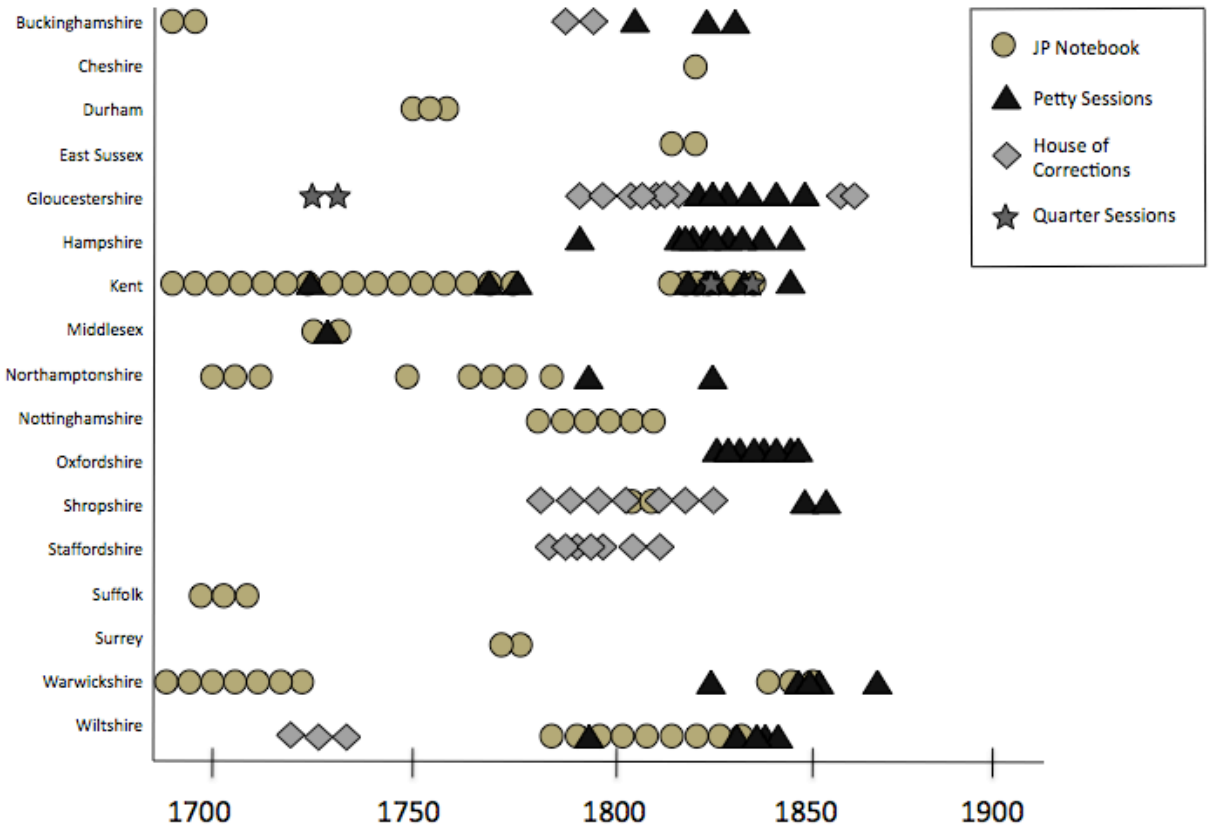

Figure 1.3: Type of Source From Each County Per Decade

I have gone through each of these 64 sources and transcribed all of the cases relating to employment disputes. Most of these, such as claims for unpaid wages and complaints about workers running away or refusing to come serve as agreed, fell under the purview of master and servant law. Others, such as larcenies and assaults, technically did not. Still, they represented a breakdown of the employment relationship requiring legal intervention the same way that master and servant infractions did. Furthermore, as we shall see, though assaults and thefts were legally distinct from master and servant breaches, in practice the boundaries between all of these offences were blurred, porous, and frequently ignored. Such inter-connections and ambiguities encourage a more comprehensive view of employment conflicts and the responses to them. A stricter adherence to the legal classification of crimes would distort the reality that they existed

together on a continuum of transgressive behaviour contested and negotiated by servants, masters, and magistrates. Therefore, I have included all forms of conflict between workers and employers in this study.

Organizing the Sources

Altogether, the 64 sources contain 5590 cases of employment disputes. I have entered each of these cases into one of two databases that I created for the purposes of carrying out quantitative analyses. It was necessary to divide the cases into two different databases because of the nature of the sources. House of corrections records for the most part need to be separated from magistrates' notebooks and petty sessions registers because they do not convey the full range of outcomes possible in employment conflicts. The same JP who imprisoned the workers listed in bridewell registers and calendars inevitably encountered others whom he ordered back to service, or fined by abatement of wages, or dealt with in any number of other ways that the house of corrections records by their very nature cannot reflect. Moreover, since the vast majority of inmates incarcerated for employment offences were servants, not masters, the inclusion of all the house of corrections data with that obtained from other sources would skew the plaintiff and defendant ratios of workers and employers.

The organizing principle behind the two databases is that the first is made up of grievances that had entered judicial channels and might yet be resolved in a variety of ways, while the second consists of complaints that had already resulted in a specific outcome – the defendant's incarceration. This allows for the separation of incomparable data without sacrificing quantity. The first, or Pre-Sentencing Database, is the larger of the two and contains 3485 cases. The second, or Post-Sentencing Database, contains 2105 cases.

Personal Notebook	Petty Sessions	House of Corrections	Quarter Sessions
Thomas Allen (98)	Atherstone 1 (35)	Buckingham (7)	Gloucestershire (19)
A. H. Bradley (3)	Atherstone 2 (46)	Shrewsbury (60)	Knatchbull (Canterbury)(12)
James Brockman (148)	Atherstone 3 (7)		Pennington (Canterbury) (3)
Ralph D.Brockman (39)	St. Augustine (64)		
William Brockman (214)	Aylesbury 1 (14)		
William Bromley (7)	Aylesbury 2 (18)		
Gervase Clifton (23)	Aylesford (22)		
Devereux Edgar (291)	Basingstoke 1 (60)		
Richard Hill (27)	Basingstoke 2 (1)		
Richard Colt Hoare (29)	Bicester (201)		
William Hunt (20)	Bullingdon (88)		
Richard Jee (6)	Cheltenham (122)		
Henry Norris (13)	Daventry (1)		
Thomas Parker (103)	Devizes (105)		
Montague Pennington(94)	Droxford (40)		
Richard Stileman (46)	Fareham (113)		
Edmund Tew (362)	Hackney (4)		
Thomas Thornton (5)	Kettering (32)		
Thomas Lee Thornton (3)	Kineton (12)		
Philip Ward (6)	Knatchbull (Ashford) (8)		
Thomas Ward (262)	Lathe of Scray (37)		
Richard Wyatt (20)	Ludlow (13)		
Henry Yate (34)	Lyndhurst (6)		
	Maidstone (1)		
	Marlborough (21)		
	Oxford (85)		
	Pennington(Wingham)(51)		
	Portsdown (49)		
	Sarum (154)		
	Stony Stratford (38)		
	Tewkesbury (83)		
1853 cases	**1531 cases**	**67 cases**	**34 cases**

Table 1.1 – Types of Sources in the Pre-Sentencing Database, 1687-1866

The number in parentheses is the number of cases contained in that source. For simplicity's sake I have referred to the sources by the name of the magistrate, petty sessions, house of corrections, or Quarter Sessions that created them, rather than by their archival reference numbers. In cases where I got multiple records from the same place that were not continuous, I have designated them by a number. For instance, Basingstoke 1 is Hampshire Archives and Local Studies (HALS) 50M63/C1, Minute Book of the Basingstoke Petty Sessions, 1790-1795 and Basingstoke 2 is HALS 8M62/30, Basingstoke Petty Sessions Charge Book, 1829-1830.

House of Corrections Calendar	House of Corrections Register
Gloucestershire 1 (5)	Gloucestershire 2 (139)
Shrewsbury (278)	Littledean (404)
Stafford 1 (12)	Northleach (329)
Wiltshire (3)	Stafford 2 (935)
298 inmates	**1807 inmates**

Table 1.2 – Types of Sources in the Post-Sentencing Database, 1731-1860
The number in parentheses is the number of inmates contained in that source. For simplicity's sake I have referred to the sources by the name of the house of corrections or county Quarter Sessions that created them, rather than by their archival reference numbers. In cases where I got multiple records from the same place that were not continuous, I have designated them by a number. For instance, Gloucestershire 1 is Gloucestershire Archives (GA) Q/GC/7/2, Gloucestershire Quarter Sessions Calendar of Prisoners, 1817-1831 and Gloucestershire 2 is GA Q/Gc/9/1, Gloucestershire Quarter Sessions Register of Summary Convictions, 1853-1860.

Tables 1.1 and 1.2 show the breakdown of the quantity and type of sources in each database, as well as the number of cases drawn from each type. The composition of the Post-Sentencing Database is more straightforward than that of the Pre-Sentencing Database. It is compiled exclusively from eight house of corrections records. Four of these are registers, which were complete lists of all the prisoners committed to the house of corrections in the period of time covered by the record. The other four are calendars, which were lists released at every Quarter Sessions of the inmates currently held in the institution.[108]

The Pre-Sentencing Database is more complex. It is compiled from fifty-seven total sources. Technically, 25 of these are notebooks kept by individual magistrates, 29 are petty sessions records, 2 are house of corrections records, and one is a record of Quarter Sessions. However, the notebook kept by Sir Edward Knatchbull, the chairman of Canterbury Quarter Sessions, is exclusively a record of cases he heard at those sessions.[109] The notebook kept by Sir

[108] Robert Shoemaker, "Using Quarter Sessions Records as Evidence for the Study of Crime and Criminal Justice," *Archives* 20 (1993): 148.
[109] KHLC, U951/O5-6, Justice's Diary Kept by Sir Edward Knatchbull (9th Bart), 1819-1822, 1830-1835.

Wyndham Knatchbull, Sir Edward's great-uncle, is exclusively a record of Ashford petty sessions meetings that he attended.[110] Therefore I have counted Edward Knatchbull's notebook as a Quarter Sessions source, and Wyndham Knatchbull's notebook as a petty sessions source. The notebook kept by the magistrate Montague Pennington contains a mix of cases that he heard sitting alone as a single justice, in petty sessions for Wingham, and at Canterbury Quarter Sessions.[111] Therefore, I have divided the cases in his notebook up between the three relevant columns in Table 1.1.

Finally, the Pre-Sentencing Database also contains two bridewell records. One is the Buckinghamshire Quarter Sessions Calendar of Prisoners for the period 1789 to 1804, and the other is the Shrewsbury House of Corrections Calendars, which cover the years 1786 to 1834.[112] This latter source is also included in the Post-Sentencing Database, though none of the cases in the two datasets overlap. Issued at every Shropshire Quarter Sessions, the Shrewsbury calendars consist of two separate lists of current inmates – one list of the "Criminal Prisoners" in the custody of the county gaoler, the other of the "Prisoners in the House of Correction." The latter group was mainly composed of men and women who had been committed summarily for terms of one to three months for various misdemeanours, including master and servant breaches. Forty-year-old Richard Humphreys, for instance, was being "held to hard labour for the space of one calendar month" for wilfully absenting himself from the service of his mistress, Elisabeth Onions.[113] Some of the inmates in this section were serving longer sentences for more serious offences, such as Ann Griffiths, who had been imprisoned with hard labour for a year at the

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[110] KHLC, U951/O4, Wyndham Knatchbull, 1734-1745.
[111] KHLC, U2639/O1, Justice Diary of the Rev. Montagu Pennington, JP, 1809-1838.
[112] Centre for Buckinghamshire Studies (CBS), Q/SC 1/1-2, Calendar of Prisoners, 1789-1804; Shropshire Archives (SA), QS/10/1-3, Calendars of Prisoners, 1786-1800, 1786-1817, 1817-1834.
[113] SA, QS/10/2, Calendars of Prisoners, No. CII, July 1803, Prisoner 74, p. 5.

previous Summer Assizes for feloniously stealing and carrying away a diverse selection of goods including a basket and cotton stockings.[114] The "Criminal Prisoners," on the other hand, consisted of defendants who had been committed to stand trial for their crimes at Quarter Sessions or Assizes, but whose trials had not yet occurred. Ann Griffiths herself, for example, first appeared in this category before she had been tried and found guilty.

In total, the Shrewsbury calendars contain 338 employment disputes. Two hundred and seventy-eight of them, or 82%, were entered into the Post-Sentencing Database because they came from the lists of "Prisoners in the House of Corrections" who had been summarily punished with incarceration. However, the other 60 cases were drawn from the records of "Criminal Prisoners." They consisted of servants who had been charged with weightier transgressions, such as theft from their masters, and subsequently committed for trial. Not all of these accused went on to be convicted or imprisoned. Some, such as the clerk Thomas Ryder, were acquitted. Others, such as the printer Edward Palmer, were unlucky enough to be found guilty and transported (see Chapter Three).[115] Since the outcomes of these cases were yet to be determined, they were entered into the Pre-Sentencing Database. For the same reason, all seven of the employment disputes found in the Buckinghamshire Quarter Sessions Calendar were also included in the Pre-Sentencing Database.

Admittedly, this is an imperfect solution to the peculiar challenge of these sources. I have already explained why house of corrections data is not directly comparable with the data drawn from magistrates' notebooks and petty sessions records. The fundamental differences between bridewell records and other types of sources occasioned the creation of two separate databases in

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[114] SA, QS/10/2, Calendars of Prisoners, No. CII, July 1803, Prisoner 49, p. 4; No. XCVII, August 1802, Prisoner 7, p.1.
[115] SA, QS/10/2, Calendars of Prisoners, No. XCIV, p. 84; SA, QS/10/3, Calendars of Prisoners, "Calendar of Criminal Prisoners Shropshire Summer Assizes 1817," Prisoner 25.

the first place. However, inmates who had yet to be sentenced, some of whom were not ultimately incarcerated, clearly could not be included in the Post-Sentencing Database, which is made up of convicted prisoners. Moreover, the Pre-Sentencing Database also contains 66 cases in which the presiding magistrates, sitting alone or in petty sessions, committed the defendants for trial. These cases are comparable to those of inmates awaiting trial in the house of corrections records, which justifies the inclusion of the latter in the database as well. Altogether, committals in notebooks and petty sessions records and instances of bridewell inmates awaiting trials account for just 133, or 4%, of all entries in the Pre-Sentencing Database. This is a small subset. The vast majority of cases in this dataset are disputes brought before JPs who adjudicated them summarily.

Challenges of the Sources

The sources for this dissertation present additional challenges beyond those of attempting to organize them into coherent datasets. While justicing notebooks and petty sessions records, as the main repositories of master and servant cases, are invaluable for a study of this nature, they are not without their problems. Records of petty sessions are relatively scarce, especially those dating from before the nineteenth century. Magistrates' notebooks are even more rare. Although JPs were directed by legal advice manuals to keep a "record or memorial…of things done before [them] judicially, in the execution of [their] office…that…shall not be gainsaid," there was no systematic attempt made at collecting or preserving these documents at the time. In fact, justices were informed that they might "keep [these notebooks] by them" in their homes, since the record was not needed in cases where a convicted offender was not going to be committed.[116] The patchy survival of the notebooks is therefore subject to the same vagaries of chance as other

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[116] Burn, *Justice of the Peace*, 1st ed., Vol. 2 (1755), 66, 85.

personal papers and diaries. Moreover, the minimal oversight of justices probably meant that some, perhaps many, did not even bother to keep any accounts of their activity.[117]

When records do exist, the number of cases contained within them is highly variable. Some justices were exceptionally diligent in undertaking their duties, while others almost never acted. Some heard many employment disputes, while others heard none. Within a county division, justices could have overlapping territories, sometimes giving plaintiffs a choice about which JP or petty sessions bench to approach with their grievances. Workers might seek out particular magistrates who were reputed to be sympathetic to their complaints, and might equally avoid those known to be more hostile. Justices also often specialized in certain areas of the law. Some might concentrate on master and servant conflicts, while others focused on poaching, for instance. All of these factors affected the caseloads of magistrates.[118]

The notebooks and petty sessions records that have survived were composed with widely differing degrees of descriptiveness (and legibility). Entries about employment disputes could sometimes be utterly enigmatic in their lack of particulars, as when the justices of the Aylesford petty sessions in Kent – or their clerk – noted simply: "A dispute settled between one Whibley and servant."[119] Others went into meticulous detail. The Nottinghamshire magistrate Sir Gervase Clifton, for example, devoted three pages to the lengthy complaint of John Osborn and his wife against their servant girl Ann Townshend, whose many transgressions included "[sitting] up all night with a man she let into the house," wearing her mistress's petticoat, knocking over the milk

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[117] Hay, "England," 77.
[118] Hay, "Master and Servant," 232-233; King, "Summary Courts," 130; Hay, "England," 76-77.
[119] KHLC, PS/To/M1, Lathe of Aylesford Petty Sessions, September 14, 1775.

pail, and beating the calves with a stick.[120] Most cases fell somewhere in between these two extremes.

Sources were also kept with varying regularity and comprehensiveness. Some had gaps of weeks, months, or even years without entries. For instance, Sir William Bromley of Warwickshire kept a diary of his justicing business over a four-decade span from 1685 until 1728, but did not record any cases in 27 of those years.[121] According to his biographer Andrew Hanham, Bromley was "engrossed" by his magisterial duties during those periods when he was in residence at Baginton, his manor near Coventry. However, he was frequently called away since he enjoyed a long and distinguished political career. In 1690, when he was not yet even 30 years old, he was first elected to the House of Commons, and quickly rose in status, owing to his "great personal integrity." He became "one of the paladins of Toryism" during Queen Anne's reign and was appointed to the Speaker's Chair in a unanimous vote following his party's sweeping victory in the election of 1710. Three years later, the Lord Treasurer persuaded him to accept the position of Secretary of State. However, he did not hold this office for long. He was relieved of it in 1714 upon the accession of the new Hanoverian king, who favoured the Whigs. Nevertheless, he remained an MP for Oxford University for another eighteen years, until 1732 when he passed away '"unexpectedly"' in his London lodgings.[122]

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[120] Nottinghamshire Archives (NA), M8050, 8051, Notebooks of Sir Gervase Clifton JP, 1772-1812, p. 28-30.
[121] Warwickshire Country Record Office (WCRO), CR103, Sir William Bromley of Baginton: Notebook of Business of a Justice out of Sessions, 1685-1728.
[122] Andrew A. Hanham, "Bromley, William II (1663-1732)," *The History of Parliament: The House of Commons, 1690-1715,* ed. D. Hayton, E. Cruickshanks, S. Handley (Woodbridge, Suffolk: Boydell and Brewer, 2002), http://www.historyofparliamentonline.org/volume/1690-1715/member/bromley-william-ii-1663-1732; Andrew A. Hanham, "Bromley, William (*bap.* 1663, *d.* 1732)," *Oxford Dictionary of National Biography*. Oxford University Press, 2004; online edn, May 2011 [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/3515, accessed 2 June 2013].

Even when magistrates did keep regular records, these were not necessarily exhaustive accounts of their activity. Montague Pennington, a clerical justice from Kent whose "memoranda of such business and transactions as are of any consequence or use for reference" are generally quite informative, apparently did not believe that employment disputes always merited notation. He once described a petty sessions meeting at which the magistrates heard testimony about a pauper's removal and "No other but common business of servants' complaints etc."[123] It is impossible to know how many of these complaints Pennington dealt with but did not bother to catalogue, or whether other magistrates were similarly selective in their documentation.

The records of prisoners in houses of correction are also valuable sources for this study that nevertheless present their own challenges. They only capture a limited selection of employment disputes. Not all master and servant conflicts ended in incarceration. Other sanctions, such as abatement of wages, might be imposed on guilty workers. Moreover, workers were not always convicted of the charges brought against them. None of these cases are represented in house of corrections records, except in the relatively rare instances when defendants awaiting trial – already a minority of inmates – did not ultimately receive prison sentences. Furthermore, since the penal provisions of employment law did not actually apply to masters, the vast majority of master and servant prisoners were workers. With very few exceptions then – which will be discussed at greater length in Chapters Two and Four – the grievances of servants are not reflected at all in the bridewell records.

Even within these relatively narrow parameters, cases might be missing. The calendars, which we have seen were lists of current inmates issued at every Quarter Sessions, left out anybody sentenced in between Sessions to terms shorter than three months, who would have

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[123] KHLC, U2639/O1, Montagu Pennington, January 1809, unnumbered first page; July 4, 1809, p. 5.

been committed after the creation of one calendar and discharged before the appearance of the next. This likely included many workers charged with employment infractions, who frequently received sentences of one or two months for their misconduct (see Tables 1.3 and 1.4 below).

Although an unknown number of employment disputes inevitably went undocumented in the various sources used in this dissertation for all of the reasons outlined above, this fact should not affect the gendered analysis undertaken here. There is no evidence that the sex of a servant made any difference in a magistrate's decision about whether or not to record a case in his notebook. We should not suppose that justices were choosing to leave out employment disputes involving women workers but including ones involving men, or vice versa. Therefore even in notebooks such as Pennington's, which were not entirely comprehensive, the total number of documented cases might be slightly inaccurate, but the gender ratio should be a fairly faithful reflection of reality.

However, we must consider the possibility that female defendants in employment conflicts were more likely than their male counterparts to be sentenced to terms of imprisonment shorter than three months. In that event, women would probably be underrepresented in the house of corrections calendars because anyone serving sentences shorter than three months went unrecorded in these sources if they were committed and discharged in between the quarterly releases of lists of current inmates.

In order to test this possibility, I have compared the sentence lengths of male and female prisoners incarcerated for employment offences in the Shrewsbury House of Corrections calendar, which was issued at every Quarter Sessions, and in the Stafford House of Corrections

register, which is a comprehensive compendium of all inmates.[124] Ideally, I would look at a calendar and a register from the same county, but the only calendar from Staffordshire in my dataset is too small to offer a meaningful comparison with the Stafford register. It contains just 12 inmates – none of them women – incarcerated for master and servant offences. I do not have any prison registers from Shropshire to compare with the Shrewsbury calendar. However, Staffordshire and Shropshire shared some economic similarities, since both industrialized early and contained regions rich in iron and coal.[125] Moreover, the Shrewsbury calendar and the Stafford register cover roughly contemporaneous periods of time (though I have a longer run of the former than the latter).

Length of Sentence	Female Servants	Male Servants
Less than one month	4 (8%)	7 (3%)
One month	33 (65%)	125 (55%)
Six weeks	0 (0%)	8 (4%)
Two months	5 (10%)	23 (10%)
Three months	5 (10%)	52 (23%)
Other amount	1 (2%)	2 (1%)
Unspecified	3 (6%)	10 (4%)
Total	**51**	**227**

Table 1.3: Length of Sentence in Shrewsbury House of Correction Calendars For Master and Servant Offences By Gender of Offender, 1786-1834
Source: SA, QS/10/1-3, Calendars of Prisoners.

[124] I have only included those cases from the Shrewsbury calendar that were entered into the Post-Sentencing Database. The cases that were included in the Pre-Sentencing Database are not applicable to this exercise, since the inmates had not been sentenced.
[125] Berg, *Age of Manufactures,* 126; A.D.M. Phillips and C.B. Phillips, eds, *An Historical Atlas of Staffordshire* (Manchester: Manchester University Press, 2011).

Length of Sentence	Female Servants	Male Servants
Less than one month	13 (9%)	68 (9%)
One month	96 (69%)	555 (70%)
Six weeks	1 (1%)	8 (1%)
Two months	18 (13%)	60 (8%)
Three months	8 (6%)	99 (12%)
Other amount	2 (1%)	5 (1%)
Unspecified	1 (1%)	1 (0.1%)
Total	**139**	**796**

Table 1.4: Length of Sentence in Stafford House of Corrections Register for Master and Servant Offences by Gender of Offender, 1792-1814
Source: Staffordshire Record Office (SRO), D(W)/1723/1-2, Register for House of Correction.

Both sources show that female workers do seem to have been incarcerated for terms of two months or less proportionately more often than male workers. Table 1.3 indicates that 42 female servants in the Shrewsbury House of Correction – or 82% of them – and 163 male servants – or 72% of them – were imprisoned for less than three months. Table 1.4 reveals that 128 female servants in the Stafford House of Correction – or 92% of them – and 691 male servants – or 87% of them –received sentences shorter than three months. The shares of both men and women incarcerated for less than three months are higher in the Stafford register than in the Shrewsbury calendar. This discrepancy probably reflects the fact that the calendar was indeed missing a number of inmates imprisoned in between sessions for terms shorter than three months.

Since female workers received shorter sentences proportionately more often than men, they were likely somewhat underrepresented in house of corrections calendars. However, the underrepresentation is probably not seriously problematic for this study. The difference between the shares of sentences shorter than three months in the register and the calendar is actually larger for male workers than it is for female workers. Moreover, the majority of master and servant cases found in the bridewell records consulted for this dissertation come from

comprehensive registers, not calendars. As we have seen, I used four calendars and four registers in the Post-Sentencing Database, but the registers account for 1807, or 86%, of all the employment disputes contained in these records. Therefore, the impact on my findings of women's possible underrepresentation in house of corrections calendars is minimal.

Challenges of Analysis

Despite their drawbacks, magistrates' notebooks, petty sessions records, and house of corrections calendars and registers remain essential to any study of master and servant offences in the period, since they preserve the evidence of the day-to-day operation of the law. The databases I have compiled from them enable a quantitative analysis of the gendered experience and administration of employment law.

In order to undertake this analysis, I have entered and coded as much information as possible from each case in both databases, including the date, the names and sexes of the servants and employers involved, the type of work that they performed (when it was mentioned), and the specific grievances or charges brought. In the Pre-Sentencing Database, I have classified disputants according to whether they were plaintiffs or defendants (or in some instances, both, neither, or unknown), as well as the outcome of the case. In the Post-Sentencing Database, I have coded the prisoners' sentence lengths, whether or not they were released early, and whether or not they were ordered to perform hard labour. Using this information, I have generated statistics about the involvement and treatment of male and female workers in master and servant disputes.

However, the quantitative analysis of the databases has its limits. It has not been possible for me to systematically measure the involvement of men and women in employment disputes against their economic involvement in the regions from which the sources were drawn. There is

no quantitative information available about women's labour force participation for the eighteenth century.[126] Beginning in the nineteenth century there are national decennial censuses, which I have used to a small extent in Chapter Five in my examination of the declining involvement of women workers in employment disputes. However, prior to 1841 the censuses are "of little use for the analysis of female employment" and thereafter their occupational information on women is problematic and must be treated with caution.[127] Moreover, the regions served by magistrates, petty sessions, and houses of correction were not necessarily coterminous with census enumeration districts. Thus, even if the female occupational data in the mid-nineteenth century censuses were perfectly reliable, it might not be an accurate way of measuring the particular regional workforce from which disputants in employment cases were drawn.

Since I have not been able to determine the precise relationship between the population of all workers and the population of workers who wound up before the courts in employment disputes, my database numbers and the arguments that I make from them can only apply to the latter group. The statistical population under examination here is disputants in master and servant proceedings, not workers in general or even all workers in employment conflicts (since not all employment conflicts resulted in court cases). However, I must stress that the databases are made up of an opportunistic combination of heterogeneous sources of varying degrees of completeness. They are far from random samples, and so tests of statistical significance performed on the percentages derived from them would be meaningless. Therefore I have not done these tests. Any arguments I make about the significance of my findings relate to their importance from a social, legal, or historical perspective, not to statistical significance. In spite of

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[126] Berg, "Women's Work, Mechanization," 67.
[127] Edward Higgs, "Women, Occupations and Work in the Nineteenth Century Censuses," *History Workshop* 23 (1987): 61-76; Horrell and Humphries, "Women's Labour Force Participation," 90.

the limitations imposed on my quantitative analysis by the nature of my sources, it is still valuable in shedding light on the gendered experience of master and servant law.

A Note on Terminology

For simplicity's sake, I generally use the terms 'worker' and 'servant' interchangeably in the dissertation. This practice is in keeping with the fact that the copious body of legislation and judicial decisions regulating employment relationships is called 'master and servant law' – a designation that elides the wide and confusing array of occupational distinctions found in the statutes. Moreover, this synonymous usage is common in the scholarship on the subject. Nor was it unheard of among contemporaries. Although the legal classification of a 'servant' in the period before 1800 was supposedly an agricultural worker hired by the year, the actual use of the term was ambiguous. Justices of the peace, high court judges, and the public all deployed it "with a series of overlapping connotations," as Hay observes. Moreover, Simon Deakin and Frank Wilkinson point out that in the nineteenth century the term came to mean any manual worker in industry or agriculture "under the disciplinary regime of the master and servant legislation." This was in contradistinction to the term 'employee,' which referred to a "clerical, managerial or professional worker outside the master-servant regime." I therefore do not use the term employee as a synonym for servant or worker in this dissertation. I do, however, refer to masters (and mistresses) and employers interchangeably, since these terms, while not necessarily synonymous, were not clearly distinct.[128] Apprentices also fell under the jurisdiction of employment law.[129] They account for 684, or 12%, of workers in the 5590 cases in the

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[128] Hay, "Master and Servant," 230; Deakin and Wilkinson, *Law of the Labour Market*, 36, 106.
[129] Hay, "Master and Servant," 230.

dissertation. Unless otherwise indicated, the blanket terms ‘servants’ and ‘workers’ used in discussions of aggregate data also include apprentices.

Dissertation Outline

The first chapter explores the role of gender in the legislation and case law that together constituted the basis of the master and servant regime. Neither the statutes nor the high court doctrine can be accurately described as “gender-neutral.” Rather, they incorporated and reflected a conceptual tension between women’s femininity and their identity as workers. Male labour, not female labour, was considered normative. As a result, female servants sometimes found themselves omitted from the coverage of master and servant law both semantically and substantively. Pregnancy was a particular catalyst for the prejudicial treatment of female servants, as the societal stigmatization of poor, unwed mothers was integrated into employment law.

The second chapter uses the two databases to conduct an aggregate quantitative analysis of male and female workers’ experiences under master and servant law. It reveals that in general, male servants were slightly more likely to be defendants in employment disputes than their female counterparts. Overall, men were also more likely than women to be treated harshly when they were defendants, though once a sentence had been pronounced women had less chance of receiving leniency when the punishment was actually carried out. When male servants were plaintiffs, however, they enjoyed slightly higher rates of success than did female complainants. The chapter also examines the specific master and servant grievances brought by male and female workers before the magistrates, and the particular offences with which their employers charged them. While the types of complaints and accusations were generally the same for

workers of both sexes, the proportions in which they occurred differed. Some transgressions, though, were gendered.

The third and fourth chapters explore in detail two types of employment dispute that fell outside the purview of master and servant legislation, and which also happened to account for larger shares of female than of male workers' cases: accusations of illicit appropriations from masters, and allegations of assault. Chapter Three demonstrates that female servants were overrepresented among the accused in cases of theft and embezzlement compared to other employment offences. Although they were still treated somewhat more leniently than male servants charged with these crimes, they were dealt with more harshly relative to female defendants prosecuted for other employment transgressions than male thieves and embezzlers were relative to other male defendants. The chapter also reveals how gender and the sexual division of labour influenced what workers stole from their masters and the methods by which they obtained these goods.

Chapter Four shows that women workers were also overrepresented in assault cases compared to other master and servant conflicts. They were more likely to charge their employers with assault than were their male counterparts. I argue that this is because women were more vulnerable to violence in the employment relationship than were men and actually experienced proportionately more assaults. In a reversal of the general pattern, female servants bringing assault accusations were slightly more likely than male servants to be successful. Though workers of both sexes were overwhelmingly plaintiffs in their assault cases, they were defendants in equal (small) shares of these conflicts, showing that women were no less prone to violence than men. Both male and female workers were treated more harshly for assault than for other master and servant offences, although not as harshly as the law in theory allowed. The

chapter ends with a discussion of one strikingly gendered form of violence – cruelty to animals. The killing and injuring of animals – mainly horses – was exclusively carried out by male servants in this dissertation's sources.

Finally, the fifth chapter explores changes in the gendered application of employment law over the course of the period. It reveals that female servants made up a steadily decreasing share of workers in all employment disputes from the beginning of the eighteenth century to the middle of the nineteenth. I suggest that this decline can be attributed to women's changing labour force participation – specifically their growing exclusion from employment in arable agriculture. However, female textile workers represented an exception to this trend. They were also exceptional in their extremely high rates as defendants. Their masters targeted them particularly for prosecution in the late eighteenth and early nineteenth centuries, at the very time that overall shares of cases involving female servants were decreasing. I argue that manufacturers used master and servant law, sometimes in combination with written contracts, to impose industrial discipline on women at the forefront of economic transformation. Prosecutions for embezzlement and leaving service helped coerce enhanced productivity from an exploited female workforce.

The conclusion shows how the findings of the five chapters affect our scholarly understanding of master and servant law. It highlights the various ways that gender shaped the law in its theory and practice, as well as the differing treatment of male and female servants in the legislation; in the case law; in the magistrates' parlours and petty sessions meetings where the preponderance of cases were heard; and in the houses of correction where servants convicted of offences against their employers were often punished. I conclude by suggesting that the interplay of gender ideology and the law continues to have a significant impact in our modern world, and that the lessons of the eighteenth and nineteenth centuries should not be ignored

today, when so many women globally are facing similar conditions to their counterparts in the English Industrial Revolution.

Chapter One: Gender and the Architecture of Master and Servant Law

Before undertaking an analysis of gender's influence on the routine administration and lived experience of master and servant law in the summary courts, it is important to understand first how it was incorporated into the statutes and case law. Patrick Atiyah has argued that common law and statute law must be seen as "two developing and moving bodies of law" in relationship with one another – a "legislative-judicial partnership."[1] Parliament passed legislation, including statutes regulating employment relationships and conflicts. The twelve judges of the central royal courts of common law, particularly the four judges of King's Bench led by the lord chief justice of England, interpreted the meaning of these statutes and created case law through rulings that set legal precedents. By the eighteenth century, King's Bench was the most important of the three common law courts, in part because it exercised an exclusive criminal jurisdiction on its 'crown side' in addition to hearing civil litigation on its 'plea side.' The judges of King's Bench not only travelled the assize circuit with the judges of the other two royal courts (Common Pleas and Exchequer), where they heard criminal cases tried on indictment in the counties. They also heard misdemeanours, normally minor ones, prosecuted on indictment in Middlesex, where they had original jurisdiction, as well as more serious misdemeanours exhibited on criminal informations, a special form of prosecution unique to the 'crown side.' Moreover, King's Bench was the supreme court of criminal review in England. Magistrates' summary convictions, and cases tried on indictment at Quarter Sessions and even Assizes could be removed there on writs of certiorari. The judges could overturn verdicts or order new trials. In all these dealings with criminal proceedings, they often made new law.[2]

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[1] Patrick Atiyah, "Common Law and Statute Law," *The Modern Law Review* 48 (1985):1,3.
[2] Douglas Hay, ed. *Criminal Cases on the Crown Side of Kings' Bench: Staffordshire, 1740-1800* (Stafford: Staffordshire Record Society, 2010); Douglas Hay, "The Courts of Westminster Hall in the

Together, statutory and case law constituted the foundation of the master and servant legal regime. Magistrates might not always adhere to it in their summary hearings, but it still served as the conceptual framework within which employment relationships were contracted and disputed. Although Hay and Craven declare that with very few exceptions the statutes and the case law were "gender neutral," they acknowledge that gender distinctions, alongside those of class, age, and race, were "coded into the legislation and reified in differential rates of prosecution, conviction, and punishment."[3] While this reification is examined in depth in the remainder of the dissertation, the current chapter focuses on the gendered coding of the statutes and judicial decisions.

The source base is different from that of the other chapters, which rely primarily on the databases I created using justicing notebooks, petty sessions records, and house of corrections registers and calendars as outlined in the Introduction. Instead, this chapter draws chiefly on the statutes, the English Reports, and popular legal manuals for magistrates. Hay and Craven have described employment law as a "creature of statute." Beginning with the enactment in 1563 of the Statute of Artificers – the Elizabethan recodification of medieval legislation that dominated early modern labour law until its repeal in the early nineteenth century – and ending with the abolition of the master and servant penal regime in 1875, nearly 2,000 employment statutes and ordinances were passed in Great Britain and its colonies.[4] They represent a very important source for the theoretical principles underlying master and servant law.

Eighteenth Century," *The Supreme Court of Nova Scotia, 1754-2004: From Imperial Bastion to Provincial Oracle*, eds. Philip Girard, Jim Phillips, and Barry Cahill (Toronto: Osgoode Society for Canadian Legal History and University of Toronto Press, 2004), 20-21.

[3] Hay and Craven, "Introduction," 36; Hay, "England," 67.

[4] Hay and Craven, "Introduction," 6, 10-11.

Complementing the statutes were the rulings of the high court judges. Hay notes that the corpus of case law surrounding the employment acts was "extensive." The eighteenth century alone produced more than one hundred important reported cases.[5] Most of these can be found in the English Reports, originally published in 178 volumes in the early twentieth century and now fully digitized and searchable online. This collection, boasting more than 100,000 cases, consists of reprints of almost all the nominate reports from the Middle Ages to the mid-nineteenth century. The nominate reports are compilations named after the private court reporters who assembled and edited them. They are so called to differentiate them from the Year Books – the earliest English law reports that were published in Anglo-Norman from the late thirteenth century until 1537 and whose authorship is anonymous. When the publication of the Year Books ceased, individual barristers took up law reporting. The accuracy and reliability of their efforts was highly variable. According to Michael Bryan, the quality of reporting declined in the seventeenth and early eighteenth centuries from the high standard set by one of the earliest reporters, the Elizabethan Edmund Plowden. It was restored by Sir James Burrow, the "father of modern law reporting," who covered the judgments of Lord Chief Justice Mansfield from 1756 to 1772 and pioneered the practice of prefacing each case with a concise note about the relevant legal proposition contained therein. By demonstrating that law reporting was both an essential service and a profitable endeavour, Burrow ushered in the "great era of the private reporter" – the period from the mid-eighteenth to the mid-nineteenth century that generated both the best and the worst of the law reports. In 1865, the Inns of Court established the Incorporated Council of Law Reporting to create official reports of the cases tried in the high courts of record. So ended

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[5] Hay, "England," 87.

the era of private reporters and the nominate reports they had produced.[6] Preserved in the English Reports, though, these collections are still an essential resource for studying the eighteenth- and nineteenth-century case law relating to employment issues.

Of course, the magistrates of the time did not have access to all the nominate reports collected in one location, since the first volume of the English Reports only appeared in 1900. It would have proved a daunting and time-consuming task for JPs to comb through all of the contemporaneously published compilations in search of relevant precedent-setting cases. A staggering number of competing nominate reports were appearing in this period – J. L. High lamented in an essay in 1882 that their rapid accumulation was a "growing evil."[7] Justices would also have found it difficult to keep abreast of the ballooning statutory law. Parliament passed approximately 13,600 statutes between 1689 and 1801. As Simon Devereaux points out, this represented a five-fold increase in legislation compared to the two preceding centuries.[8] In 1756, Lord Hardwicke declared that the statute books had "increased to such an enormous size, that no lawyer, not even one of the longest and most extensive practice, can pretend to be master of all the statutes that relate to any one case that comes before him." If well-seasoned lawyers could not cope with the proliferation of statutes, the magistrates, most of whom it must be remembered had no formal legal training, would have had very little hope of mastering them. Moreover, as we have already seen, there was no systematic attempt made to regularly promulgate complete

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[6] Michael Bryan, "Early English Law Reporting," *University of Melbourne Collections* 4 (June 2009): 45-50; Paul A. Brand, ed. *The Earliest English Law Reports* Vol. 4 (London: Selden Society, 2007), 11; Van Vechten Veeder, "The English Reports, 1292-1865. I," *Harvard Law Review* (May 1901): 1-25; Van Vechten Veeder, "The English Reports, 1292-1865. II," Harvard Law Review (June 1901): 109-117.
[7] J. L. High, "What Shall Be Done With the Reports?" *American Law Review* (June 1882): 429.
[8] Devereaux, "The Promulgation of the Statutes," 83.

and updated copies of the statutes to every justice in the country until the late eighteenth century, and even then the effort fell short.[9]

JPs therefore relied on advice manuals written for them, which provided concise, comprehensible summaries not only of their magisterial duties but also of the statutes and the reported cases interpreting them. These handbooks were in high demand, as the regular appearance of new and revised editions attests. William Lambard's *Eirenarcha: Or of the Office of the Justices of the Peace* was first published in 1581 and reissued several times with updates until 1619. Michael Dalton's *The Country Justice* ran through about twenty editions from 1618 until 1742. In 1755, the legal writer, clergyman, and JP for Westmorland and Cumberland, Richard Burn published *The Justice of the Peace and Parish Officer*, which immediately became the most influential and authoritative manual on the market. Its thirtieth and final edition appeared in 1869. Its success was ensured by Burn's innovative organizational scheme involving alphabetized subject categories. He explained in the Preface to the first edition that he had "attempted to bring together under one general title, divers articles relating to the same subject, which in the common books are broken and detached under various separate titles….to render the subject more perspicuous, in exhibiting the whole under one comprehensive view. Thus the laws relating to the *game*, which are above forty in number, and are interpreted in the common books under about thirteen different titles, are here digested under one general title *Game*, to which the reader shall have recourse for the knowledge of whatsoever belongeth to that subject."[10] These handbooks, especially Burn's, are also useful for historians as guides to both

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[9] Gray, "Making Law in Mid-Eighteenth Century England," 212-213; David Lieberman, *The Province of Legislation Determined: Legal Theory in Eighteenth-Century Britain* (Cambridge: Cambridge University Press, 1989), 14; Devereaux, "The Promulgation of the Statutes," 81.

[10] Devereaux, "The Promulgation of the Statutes," 84-85; Hay, "England," 77; Norma Landau, "Burn, Richard (1709–1785)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press,

the state of the law and the knowledge of its state that its local administrators would have possessed.

This chapter examines the statutes and the case law, disseminated in the English Reports and justices' manuals, and identifies the ways in which they were shaped by gendered beliefs and prejudices. A tension is manifest between the reality of women working and the ideological presumption that labour was normatively masculine. Female servants were semantically and to some extent substantively excluded from the provisions of employment law. While gendered assumptions were incorporated into the master and servant acts, it was two especially noteworthy high court rulings that particularly targeted women workers for discriminatory treatment. Employment law in its very foundations was gender-biased.

The Statutes

Although the master and servant statutes were sometimes disregarded, misconstrued, or deliberately misapplied, they nevertheless contained the guiding principles of the law. Hay and Craven counsel scholars to "take [them] seriously" by paying careful attention to both their language and policy. As part of the York Master and Servant Project, they have themselves performed sophisticated computer analyses of the statutory lexicon, comparing the substantive

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2004) [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/4043, accessed 5 May 2016]; Burn, *Justice of the Peace*, Vol. 1, 1st ed. (1755), vii; John A. Conley, "Doing it by the book: Justice of the peace manuals and English law in eighteenth century America," *The Journal of Legal History* 6: 3 (1985): 261-262. Conley has argued that these guidebooks were instrumental in transporting English common law to the American colonies. They provided an alternative to an education in the law for New World justices. Burn's manual was particularly influential. The first legal handbook to appear in America, the *Conductor Generalis*, switched from copying William Nelson's organizational format to copying Burn's in its 1764 edition, never to go back. An abridgement of Burn – straightforwardly entitled *An Abridgement of Burn's Justice of the Peace* – appeared in Massachusetts in 1773. The printer, Joseph Greenleaf, edited out some sections that he deemed irrelevant to the American context – including woollen manufacturing and witchcraft – but otherwise made no alterations and refrained from adding "any American laws or practices." 263, 268, 270, 283.

contexts of significant terms or "domain words" across all the acts in order to shed light on patterns of "borrowing and adaptation" between the metropolis and the colonies.[11] The statutes can also be taken seriously by examining their language and policy through the lens of gender.

Hay has remarked that with very few exceptions, the master and servant statutes were "gender-neutral."[12] This description is somewhat misleading. While it is true that for the most part the legislation applied to both male and female workers and did not distinguish procedurally between them, it was nevertheless imbued with gendered assumptions. The language in the Statute of Artificers, for example, is revealing. Section IV first makes reference to "his or her terme" in relation to "any Servante," clearly indicating that the Statute pertains to male and female workers alike. Yet by the end of the section, the conjunction "or her" has disappeared. The servant's "terme" is now exclusively "his." This omission of the feminine pronoun continues throughout the remainder of the Statute.[13] The law has not somehow ceased to apply to women workers in the space of a few sentences, though. Rather, they have been semantically subsumed by their male counterparts.

This elision of the female servant is an example of androcentrism – the belief that what is male is normative.[14] As feminist scholars have demonstrated, language both reflects and helps to constitute this worldview. By way of introduction to her argument in *The Second Sex* – a foundational tract of second-wave feminism – that Man establishes himself as "the Subject" and the "Absolute" while relegating Woman to the category of "the Other," Simone de Beauvoir

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[11] Hay and Craven, "Introduction," 11, 14-16.
[12] Hay, "England," 67.
[13] 5 Eliz. c. 4 (1562). The statute of artificers was enacted in 1563 and often so cited, but I follow Hay and Craven's practice of using the standardized citation from the *Chronological Table of the Statutes*, which gives 1562. Hay and Craven, "Introduction," 1 n. 1.
[14] Jennifer Coates, *Women, Men and Language: A Sociolinguistic Account of Gender Differences in Language*, 3rd ed. (reissued) (New York: Routledge, 2016), 5, 16.

points out that "man represents both the positive and the neuter to such an extent that in French *hommes* designates human beings, the particular meaning of the word *vir* being assimilated into the general meaning of the word 'homo.'"[15] 'Mankind' is also used synonymously with 'humankind' in English. Countless other examples can be adduced of androcentric language that people continue to employ widely and for the most part without reflection today. Sociologist Sherryl Kleinman teaches a course on gender inequality at the University of North Carolina in which, among other topics, she covers the use of "male (so-called) generics." These include occupational titles such as "chairman," "congressman," or "fireman," and expressions such as "manpower," "man-made," and even the popular and insidiously ubiquitous "you guys." She asserts that male-based generics "are another indicator – and, more importantly, a *reinforcer* – of a system in which 'man' in the abstract and men in the flesh are privileged over women."[16]

Interestingly, the master and servant legislation of the eighteenth and early nineteenth centuries was more meticulously gender-inclusive in its language than the Statute of Artificers. Thus, 20 Geo. II c. 19 (1746), for instance, "An Act for the more effectual preventing of Frauds and Abuses committed by Persons employed in the Manufacture of Hats, and in the Woollen,

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[15] Simone de Beauvoir, *The Second Sex*, trans. Constance Borde and Sheila Malovany-Chevallier (New York, Vintage Books: 2011; orig. 1949), 5-6.

[16] Sherryl Kleinman, "Why Sexist Language Matters," *Qualitative Sociology* 25 (2002): 299-300. The connections between language and gender go beyond these grammatical and semantic examples of androcentrism. Since the 1975 publication of Robin Lakoff's controversial and groundbreaking book *Language and Woman's Place*, in which she argued that women's speech can be distinguished from men's in a number of ways, including hedging and apologizing more frequently, there has been an explosion of sociolinguistic scholarship on gender differences in language use and the social forces that produce and reproduce these differences. Robin Tolmach Lakoff, *Language and Woman's Place*, ed. Mary Bucholtz, revised and expanded ed. (Oxford: Oxford University Press, 2004; orig. 1975). For surveys of important works and theories on language and gender, see: Kira Hall and Mary Bucholtz, eds, *Gender Articulated: Language and the Socially Constructed Self* (New York: Routledge, 1995); Penelope Eckert and Sally McConnell-Ginet, eds, *Language and Gender* (Cambridge: Cambridge University Press, 2003); Janet Holmes and Miriam Meyerhoff, eds, *The Handbook of Language and Gender* (Malden, MA: Blackwell Publishing, 2003); Mary Talbot, *Language and Gender*, 2nd ed. (Cambridge: Polity Press, 2010); Coates, *Women, Men and Language* (2016).

Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, and Silk Manufactures," applied to "any person or persons" engaged in those industries and to the materials that "he, she, or they" were entrusted to make up.[17] Feminine pronouns were retained alongside masculine ones all through the statute. The act of 1823 expanding magistrates' powers in employment disputes followed the same practice, referring throughout to "his or her Service," "his or her Contract," "himself or herself," and "his or her Wages."[18]

However, the statutory language underwent another shift before the end of the master and servant penal regime, in response to a sustained campaign launched by prescriptive grammarians beginning in the late eighteenth century. They attacked both 'he or she' and the neutral singular 'they' – which hitherto had been widespread in spoken and written usage – as acceptable alternatives to 'he' for the third person singular in sex-indefinite contexts. These grammarians claimed to be acting out of a concern for "logic, accuracy, and elegance." They argued that 'he or she' was awkward and clumsy, while 'they' was exclusively plural and failed to agree in number with a singular antecedent. However, Ann Bodine has shown that their motives were actually androcentric. After all, logically the disagreement of gender when using 'he' in sex-indefinite situations is just as 'inaccurate' as the disagreement of number when using 'they' in the singular. According to their own ostensible rationale, then, the grammarians ought to have proscribed the use of sex-indefinite 'he' as well as singular 'they.' Instead, they advocated for it. Moreover, they never objected to phrases such as 'one or more' and 'person or persons,' despite the fact that these are no less clumsy than 'he or she.' Number lacks the social significance of gender, though. Their campaign ultimately culminated in an 1850 Act of Parliament, which stipulated that in all future legislation "words importing the masculine gender shall be deemed and taken to include

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[17] 20 Geo. II c. 19 (1746).
[18] 4 Geo. 4 c. 34 (1823).

females …unless the contrary…is expressly provided."[19] Therefore, the later nineteenth-century employment statutes, such as the 1867 Master and Servant Act, returned to the practice in the Statute of Artificers of referring generically to all workers by masculine pronouns.[20]

The androcentric omission of the feminine pronoun also occurred in the manuals that disseminated the legislation to magistrates, to an even greater degree than it did in the original statutory language. In *The Country Justice*, Michael Dalton used sex-indefinite 'he' in his section on "Labourers" and employment law.[21] In the Preface to his own handbook, Richard Burn declared that he "hath by no means thought himself at liberty, as Mr. *Dalton* and others have done, to deliver the import [of the statutes] in his own words; but hath constantly abridged the act, in the words of the act it self, leaving out as little as possible which may seem any way material."[22] However, Burn clearly did not find it "material" to retain feminine pronouns, because he followed the same practice as the censured Mr. Dalton. In his abridgement of the Statute of Artificers, Burn completely jettisoned the conjunction "or she" that did appear, albeit briefly, in Section IV of that act. Furthermore, in abbreviating other employment statutes, such as 20 Geo. II. c.19 (1746), Burn deviated from their use of gender-inclusive language and continued instead to deploy masculine pronouns as generics. The "he, she, or they" of the original act became simply "he" in Burn's summary.[23]

To some extent, the androcentrism of the master and servant statutes and especially the manuals is part and parcel of a sexist society. Clearly, as the campaign of the prescriptive

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[19] Ann Bodine, "Androcentrism in Prescriptive Grammar: Singular 'They,' Sex-Indefinite 'He,' and 'He or She,'" *Language in Society* 4 (1975): 128-129, 133, 136, 139.
[20] 30 & 31 Vict. c. 141 (1867).
[21] Michael Dalton, *The Country Justice: Containing the Practice of the Justices of the Peace Out of Their Sessions. Gathered for the better help of such justices of the peace, as have not been much conversant in the Study of the laws of this realm* (London: Rawlins and Roycroft, 1705), 121.
[22] Burn, *Justice of the Peace*, 1st ed., Vol. 1 (1755), x. Emphasis in original.
[23] Burn, *Justice of the Peace,* 21st ed., Vol. 5 (1810), 205, 253.

grammarians demonstrates, the linguistic erasure of the feminine was not restricted to the texts of employment law. However, it is noteworthy that in the Statute of Artificers, the formulation "M[aster], M[istress] or Dame" was retained even after the use of the female pronoun in relation to servants was dropped.[24] Generally, Burn used sex-indefinite 'he' for both workers and employers, but he preserved gender distinctions between the latter more often than the former. For instance, in his section on assault, he referred to "any servant" maliciously attacking "his master or mistress."[25] Even when the existence of female employers was semantically acknowledged, servants continued to be gendered male by default. While I do not wish to overstate the significance of these differences given the larger androcentric context, it is telling that workers were particularly likely to be construed as men.

Although women did of course work, and the law recognized that fact in its application to both sexes, there was nevertheless a fundamental tendency to associate labour – *real* labour – with men and maleness. We have seen, for example, in the discussion of women's work in the Introduction, that men increasingly tried to exclude their female 'rivals' from the most profitable positions, and even from the workforce entirely, by equating skill with masculinity. A similar equation was made with productivity. In the public debates that occurred over the imposition of a tax on domestic servants, for instance, women were linked with 'unproductive,' "economically worthless" labour – in the Smithian sense of work that does not add any exchange value to an object – while men were associated with 'productive' labour.[26] Edward Higgs points out that the senior officers of the General Records Office, who interpreted census data, do not seem to have

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[24] 5 Eliz. c. 4 (1562).
[25] Burn, *Justice of the Peace*, 21st ed. Vol. 5 (1810), 216.
[26] Brown, "Assessing Men and Maids,"14-16. Brown suggests, however, that by defining servants on the basis of the work they actually performed, the tax laws opened up space for popular redefinitions of labour and productivity. Opponents of the bill insisted that the essential work of female servants raising children in large families was in fact productive and industrious. 18-20, 23, 25.

regarded women's work as "occupations with a social or economic meaning." Indeed, "economics itself was defined in terms of the work of men."[27]

Susan Brown also highlights the great anxiety provoked by the "illegitimate" engagement of "debased" men in 'female' occupations such as mantua-making, haberdashery, and millinery, as evidenced by the suggestions of MPs that these male practitioners should be subjected to a fine in the guise of a license fee.[28] The stigma against men performing 'women's work' was strong enough that they would even avoid employment in well-paid 'feminized' industries. Lace making, for example, enjoyed relatively high wages in the seventeenth and early eighteenth centuries, but by and large men still stayed out of this trade because it was considered to be 'female' labour.[29]

Lace-making notwithstanding, though, most women's work was also poorly remunerated relative to men's. This has proven to be a source of contention among scholars. They debate whether female workers' lower wages were a result of biological differences between the sexes or of custom rooted in ideology. On one side, historians such as Joyce Burnette attribute the gender wage gap and occupational segregation to physiological factors. Men were stronger and could operate heavy tools and equipment that weaker women could not. They could also work longer and more often than women, whose 'productive' hours were frequently curtailed by pregnancies and breast-feeding. In short, men received higher pay than women because they did more work than them. Women were compensated fairly in accordance with the amount and type of labour that they performed – they were simply less productive than men and so were paid

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[27] Higgs, "Women, Occupations,"63.
[28] Brown, "Assessing Men and Maids," 21-22.
[29] Berg, "What Difference," 34.

less.[30] Joel Mokyr enthusiastically echoes Burnette's contentions about the superior strength of men and the earnings-sapping time commitments of motherhood. Indeed, he dismisses any ideological explanations for the wage gap as "mindless conspiracy theories" and insists that although "feminist historians" usually reject "out of hand" these "obvious economic explanations," they are "no more than common sense."[31]

Despite Mokyr's patronizing and flippant tone, other scholars remain unconvinced that these "common sense" arguments about biological differences between men and women are really so "obvious." According to Chris Middleton, "there is no evidence" that women's lower pay and occupational segregation were a consequence of their familial responsibilities.[32] Penelope Lane points out that claims about the physical weakness of women are belied by the reality that girls were accustomed to hard manual labour from a young age. She also challenges the premise that the wage gap can be satisfactorily explained by differences in the productivity rates of men and women or in the number of hours that they worked. She observes that even when women did perform the exact same kind of labour as men for the same amount of time, they were still paid less for it – because, as women, they had intrinsically "less value" than male workers.[33]

Even if we allow that biological differences did have some impact on wage differentials between men and women, it does not follow that gender ideology had no part in creating the gap.

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[30] Joyce Burnette, *Gender, Work and Wages in Industrial Revolution Britain* (Cambridge: Cambridge University Press, 2008), 1-16.
[31] Joel Mokyr, *The Enlightened Economy: An Economic History of Britain, 1700-1850* (New Haven: Yale University Press, 2009), 322-323.
[32] Chris Middleton, "The Familiar Fate of the *Famulae*: Gender Divisions in the History of Wage Labour," *On Work: Historical, Comparative and Theoretical Approaches*, ed. R.E. Pahl (Oxford: Blackwell, 1988), 39.
[33] Penelope Lane, "A Customary or Market Wage? Women and Work in the East Midlands, c.1700-1840," *Women, Work and Wages in England, 1600-1850*, eds. Penelope Lane, Neil Raven, and K.D.M. Snell (Woodbridge, Suffolk: The Boydell Press, 2004), 102-118.

In a study of early nineteenth-century textile factories, for instance, Paul Minoletti asserts that occupational segregation occurred more often than can be accounted for by Burnette's "neoclassical approach." He shows that although strength disparities between men and women partially explain women's lower earnings, factors such as male workers refusing to accept female authority in the workplace also played an important role. Owing to this sexist stubbornness, women were excluded from the highest-paying factory overseer positions.[34] Biased beliefs – about women's unfitness for supervisory and managerial posts, for example – clearly contributed to the curtailing of female earning potential as much if not more than did their physiology.

Yet it is not only the case that ideology *in addition to* biology affected women's wages. Ideology and biology were inextricably entangled forces, a fact disregarded by scholars like Burnette and Mokyr who propound 'common sense' physiological and economic explanations for women's lower earnings. They contend, in essence, that women were not paid less than men because they were women, but rather because they were women they were paid less – because of the biological imperatives of their female bodies, which conceived, carried, and nourished children and prevented them from working the same hours as men. The dual assumptions behind this line of reasoning are that motherhood is biological, not ideological, and that it is inherently incompatible with paid work. Neither of these propositions is true.

It is an incontrovertible biological reality that women, not men, bear children. However, as Evelyn Nakano Glenn observes, the act of mothering – that is, of nurturing and caring for children – is "socially constructed, not biologically inscribed." This is amply demonstrated by the profound variation that exists in conceptions and practices of mothering across different

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[34] Paul Minoletti, "The Importance of Ideology: The Shift to Factory Production and Its Effect on Women's Employment Opportunities in the English Textile Industries, 1760-1850," *Continuity and Change* 28 (2013): 123-141.

times and places.[35] The 'mothering' of children does not necessarily need to be performed by women. Thus, any losses in productivity and wages experienced by women as a result of motherhood are not, as Burnette and Mokyr suggest, the inevitable outcome of female biology but rather the consequence of an ideological association of women with childcare. Moreover, carrying and raising babies are not of necessity insuperable obstacles to waged labour. It is certainly possible to conceive of ways of scheduling and organizing work that accommodate the exigencies of pregnancy, breastfeeding, and child rearing. Indeed, building a work environment friendlier to mothers is still one of the missions of the feminist movement today. Jane Humphries and Sarah Horrell actually found that having a child under the age of two increased the probability of a woman participating in the workforce. Mothers were more likely to withdraw from the labour market when their children were old enough to take their place.[36] Once again, therefore, we find that the economic disadvantages occasioned by motherhood, both historically and currently, are not biologically determined. Instead, they are the result of ideologically motivated methods of structuring employment that presume workers are non-mothers – an example of how, as Sonya Rose points out, gender is "constitutive of economic practices."[37]

Further proof of the association of masculinity with labour lies in the tendency to define men but not women by their trades. In censuses, enumerators frequently left out the occupational designations of married women, for example. Householders in 1841 were informed that they did

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[35] Evelyn Nakano Glenn, "Social Constructions of Mothering: A Thematic Overview," *Mothering: Ideology, Experience, and Agency*, ed. Evelyn Nakano Glenn, Grace Change, and Linda Rennie Forcey (New York: Routledge, 1994), 3.
[36] Horrell and Humphries, "Women's Labour Force Participation," 112.
[37] Estelle B. Freedman, *No Turning Back: The History of Feminism and the Future of Women* (New York: Random House, 2002), 185-186; Sonya O. Rose, *Limited Livelihoods: Gender and Class in Nineteenth-Century England* (Berkeley: University of California Press, 1992), 3, 16.

not need to include the professions of their wives or unapprenticed children on their returns.[38] Court records often identified men by their trades and women by their marital status – except in cases of employment offences. At the Tewkesbury petty sessions, for instance, Ann Smith "Wife of Sidney Smith" was charged with assaulting "Elizabeth the Wife of James Parsons," while "Charles Smith (Laborer)" – a possible relative of Ann and Sidney – was charged with assaulting James Parsons himself. Two weeks later, "Charles Hemming (Butcher)" was charged with assaulting "William Rice Fisherman."[39] In the Stafford House of Corrections Register, the 'trade' column was usually left blank for female inmates, unless they had committed a master and servant infraction. Thus Elizabeth Higgs, Ann Pugh alias Sandford, and Thomas Fletcher were all imprisoned for theft – of "muslin," "apparel," and "4 ducks," respectively – but only Fletcher's job – "chape filer" – was listed.[40]

As Amy Erickson reminds us, we should not take a relative paucity of female employment descriptors as evidence that women, especially wives, were not working, or that their occupational identities were unimportant to them.[41] Rather, I suggest that these record-keeping conventions are indicative of a worldview that associated men primarily with labour and women primarily with marriage and family life, regardless of the reality of domestic and working arrangements. Erickson argues that designations of female marital and occupational status in the eighteenth and early nineteenth century were more complicated than historians have realized because of linguistic ambiguities. For instance, while 'spinster' had come by the

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[38] Horrell and Humphries, "Women's Labour Force Participation," 95.
[39] GA, PS/TW/B/M1/1, Tewkesbury Borough Petty Sessions Division (Magistrates' Court) Minutes, p. 338-339.
[40] SRO, D(W)/1723/1, Stafford Register, Prisoners 1, 2, 3, p. 1.
[41] Amy Erickson, "Married Women's Occupations in Eighteenth-Century London," *Continuity and Change* 23 (2008): 292-295; Amy Erickson, "Marital Status and Economic Activity: Interpreting Spinsters, Wives, and Widows in Pre-Census Population Listings," *Cambridge Working Papers in Economic & Social History* 7 (2012): 3, 17.

seventeenth century to be the main identifying term for a never-married woman, it also retained its older meaning, of a woman who spun, until at least 1801. Erickson has shown that it was used in both senses on pre-census population listings in the eighteenth century.[42] Erickson's point is that this ambiguity has led scholars to underestimate the extent of women's actual labour force participation. I believe it is also revealing that a female occupational descriptor would become conflated with, and even to a certain degree usurped by, a designation of marital status. This is another example of the way that women's work identities were conceptually eclipsed in 'official' discourses by their familial identities. A female job title was appropriated as legal terminology and transformed into an indicator of a woman's conjugal state. Tellingly, this occupational term came to signify an unmarried rather than a married woman – reinforcing the notion (again, unreflective of reality) that a woman stopped working when she took on her 'true' identity as a wife and mother and that any woman who was still working – spinning, for example – must be single.

This gendering of work as masculine – or positioning it as incompatible with femininity – is also exemplified in the few master and servant statutes that do draw explicit distinctions between male and female workers. Hay has identified three pieces of English legislation that stand as exceptions to the 'gender-neutrality' of most employment law. One statute, 38 & 39 Vict. c.90 (1875), exempted children, young people, and women covered by the factory acts from forfeiting any wages beyond damage to the employer if they were convicted of master and

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[42] Erickson, "Marital Status," 3-4. She also demonstrates that scholars have been misled by the prefix 'Mrs,' which came to designate a married woman in the mid-nineteenth century. Prior to then, this abbreviation of 'mistress' was an indicator of social and economic status, referring to a gentlewoman or a businesswoman – one who possessed capital, and would be mistress of at least one servant. Erickson, "Marital Status," 8.

servant transgressions.[43] Enacted in 1875, this particular statute falls outside the time period of this dissertation. It is worth noting, though, that the infantilizing equation of female and child workers and the protectionist measures put in place for them but not for adult males, underscores the belief that women were less capable labourers who ideally would not be performing these jobs but in the meantime must be shielded in ways that men – natural workers – need not be.[44]

The other two discriminatory pieces of legislation were 43 Eliz. c. 2 (1601), the Elizabethan Poor Law, and the twenty-fourth section of the Statute of Artificers, both of which remained on the books into our period. The gendered distinctions built into them were similar and age-related. The Statute of Artificers first stipulated in section 7 that every *person* between the ages of 12 and 60 years old, not being lawfully retained or apprenticed, should be compelled to serve in husbandry by the year. However, section 24 clarified that two justices could appoint any *woman* between the ages of 12 and 40 who was unmarried and "forth of service" to serve for the year, the week, or the day for such wages as they deemed 'meet.'[45]

There are several noteworthy aspects to these provisions. They offer yet another example of androcentric language, since it becomes clear from the ensuing elaboration in Section 24 that the 'persons' referred to in Section 7 must in fact be male. Women, it is later revealed, could only be forced to serve until they attained the age of 40, while the 'persons' of Section 7 could be compelled into service until the age of 60. The contradiction is resolved with the realization that 'person' and 'man' were being used synonymously. Once again, the default worker is male. Female workers are exceptions requiring a separate section all to themselves, outlining the different set of conditions under which they could be obliged to serve. Their situation is treated

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[43] Hay, "England," 67 n. 30.
[44] See also Chapter Two on the equating of women and children.
[45] 5 Eliz. c. 4 (1562), s. 7, 11.

like an amendment or an afterthought, especially since the section addressing them comes so much farther into the statute than the original provision, and follows a string of intervening unrelated stipulations, including the section on punishments for servants who assaulted their employers. Furthermore, the substance of Section 24, as well as its positioning in the overall structure of the statute, illustrates how women were conceived as secondary, subordinate labourers to men. The latter could be compelled to serve for twenty years longer than the former. The underlying assumption is that a man should naturally be working for the great majority of his lifetime, while a woman should not.

The implication that waged work was an unfortunate but occasionally necessary life-cycle stage for (poor) women – rather than their *raison d'être*, as it was for (poor) men – also comes across in the Elizabethan Poor Law. This statute empowered churchwardens and parish overseers, with the assent of two magistrates, to bind as an apprentice any male pauper child until the age of 24, and any female pauper child until the age of 21 or marriage.[46] It is certainly worthy of note that girls, but not boys, could be released from their apprenticeships by marriage. Being a wife superseded any vocational calling in a way that being a husband did not. Once again, work and matrimony are construed as incompatible and mutually exclusive states, but only for women.

Interestingly, the age restrictions governing apprenticeship were altered in the eighteenth century. The statute 7 Geo. 3, c. 39 (1767) was passed in response to statistics showing that in several metropolitan parishes, all of the children born or admitted into workhouses in the previous year had died before their first birthdays. This act was intended to improve the conditions of London parish children's lives. One of its provisions was that both boys and girls

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[46] 45 Eliz. c. 2 (1601), s. 5.

in the city should be apprenticed for seven years or until the age of 21, since placing out boys until 24 was disruptive of domestic life, marriage, and industry. Burn remarked in his abridgement of this statute that it was a "pity that the provision should not be made general throughout the kingdom" because the "power of binding till the age of 24 seems cruel, and liable to many inconveniences."[47] Burn got his wish, because in 1778 the terms of the 1767 Act were applied to the rest of the country.[48] Tellingly, however, the stipulation about girls being bound until the age of 21 or marriage was not repealed. Moreover, no such conjugal clause was adduced to the new regulations surrounding the binding of boys. Women were still expected – in theory – to give up work in favour of the more 'feminine' duties of a wife and mother, while men faced no such expectation.

As this examination of the master and servant statutes has shown, they cannot be accurately described as gender-*neutral*. They technically applied to male and female workers alike and did not discriminate between them, except in a few revealing instances. However, the servants envisioned by the legislation were clearly gendered male. The androcentric language of the statutes, replicated to an even greater extent in the magisterial guidebooks that disseminated their contents widely, and the age-related distinctions drawn between the sexes in the acts that did actually discriminate, all underline the belief that the natural, quintessential worker was a man. There was a conceptual dissonance surrounding women workers. The stark reality of their existence forced the law to acknowledge them, but the statutory language and provisions implied that work was incompatible with being female. Whereas masculinity was associated with labour

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[47] Jonas Hanway, *An Earnest Appeal for Mercy to the Children of the Poor, Particularly Those Belonging to the Parishes Within the Bills of Mortality* (Cambridge: Cambridge University Press, 2013; orig. 1766); 7 Geo. III, c. 39; Burn, *Justice of the Peace*, 11th ed. Vol. 1 (1770), 62.
[48] 18 Geo III c. 47 (1778); Katrina Honeyman, *Child Workers in England, 1780-1820: Parish Apprentices and the Making of the Early Industrial Labour Force* (Aldershot, Hampshire: Ashgate, 2007), 19.

and productivity, femininity was associated with marriage and familial duties. Of course, there are always competing discourses and ideologies, to say nothing of the actual lived experience of men and women that blatantly contradicted such a worldview. I do not mean to suggest that everybody or even most people subscribed to this highly gendered notion of work.[49] However, it was an available ideology circulating in the period, and one that was promulgated by legislative authorities.[50] The gendering of workers as male was incorporated into the very bedrock of the master and servant regime.

The androcentrism embedded in the statutes could also impact the actual application of employment law, as a case that came to the attention of King's Bench in 1813 demonstrates. On July 20th of that year, Charles Pincing had given his housekeeper, Elizabeth Smith, two £5 notes and change. He instructed her to pay part of this amount to the property tax collector, and £5 8 shillings to John Thurkill, the overseer of the poor. Thurkill never received the sum from Smith, who was accordingly charged and convicted at the Norfolk Summer Assizes under the statute 39 Geo. III c. 85 (1799),"An Act to protect Masters and others against Embezzlement, by their Clerks or Servants."[51]

This particular piece of legislation was a result of the redefinition of theft occurring in

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[49] For instance, scholars have critiqued the notion of 'separate spheres' – one public and one private – for men and women, arguing that such an ideology was not representative of reality. On the rise of separate gendered spheres, see Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (London: Hutchinson, 1987). For counter-arguments, see for example Vickery, "Golden Age," 383-414; Margaret Hunt, *The Middling Sort: Commerce, Gender, and the Family in England, 1680-1780* (Berkeley: University of California Press, 1996); Amanda Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (New Haven: Yale University Press, 1998).

[50] Amanda Vickery, a critic of the argument that there arose sometime between the seventeenth and nineteenth centuries a separation of the spheres, and that this public/private dichotomy actually shaped women's behaviour, nevertheless acknowledges that at a "general level, eighteenth and early nineteenth-century women were associated with home and children, while men controlled public institutions." These discourses and precepts on femininity and masculinity existed, even if they were not always reflective of reality. Indeed, Vickery observes that the "notion that women were uniquely fashioned for the private realm is at least as old as Aristotle." Vickery, "Golden Age," 383, 413-414.

[51] *R v. Smith* (1813), Russ. & Ry. 267; 168 Eng. Rep. 795.

this period. Traditionally, the crime of larceny had hinged on taking goods forcibly from an owner's possession, whether actual or constructive. Embezzlement, on the other hand, was considered a breach of trust, involving the deceitful appropriation of goods that had been voluntarily placed in the custody of the guilty party by their owner. Since these goods had been consensually alienated from the owner's possession, rather than 'forcibly' taken, they could not then technically be stolen. The Victorian lawyer, judge, and legal writer James Fitzjames Stephen remarked that one of the "many strange consequences" entailed by this distinction was that "servants frequently robbed their employers with impunity of jewels, money, &c. which were… entrusted to them." In order to remedy this situation, Parliament passed the statute 21 H8 c.7 (1529), which made it a felony for servants over the age of eighteen and not apprenticed by indentures to steal or appropriate "any caskets, jewels, money, goods, or chattels" delivered into their keeping by their masters. For some two hundred years this act was "considered sufficient for practical purposes" to mitigate the "excessive inconvenience" of the legal definition of theft.[52]

Then, in the eighteenth century, the increasing diversity of illicit takings that accompanied the expansion of commerce and manufacturing once again highlighted the inadequacy of existing theft law. This prompted a doctrinal shift that George Fletcher called the "metamorphosis of larceny." In place of the older emphasis on the means by which goods had been wrested from their owner's possession, there emerged a newer focus on the deprivation of property rights *tout court*, no matter how that deprivation had occurred. As Stuart Green explains, this metamorphosis was carried out in two ways: through the repeated redefinition of

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[52] Burn, *Justice of the Peace*, 24th ed., Vol. 3 (1825), 215-217; James Fitzjames Stephen, *Selected Writings of James Fitzjames Stephen: A General View of the Criminal Law of England*, ed. K. J. M. Smith (Oxford: Oxford University Press, 2014; orig. 19th cent.), 92.

the offence of larceny to incorporate a wider range of behaviour; and through the creation of new offences that criminalized non-larcenous methods of appropriation, such as embezzlement – obtaining goods by breach of trust – which was legislated against in 1799 in the wake of an attention-grabbing case.[53]

The principal teller at a banking house in Lombard Street, Joseph Bazeley, whose duties consisted of receiving and paying money at the counter, was tried at the Old Bailey for feloniously stealing a £100 bank note that a grocer had deposited with him. Bazeley had recorded the deposit and then placed the money in his pocket. The jury found him guilty, but the case was reserved for the opinion of the high court judges. They determined that the note had never been in the possession of the bankers Esdailes and Hammet – "though it would have been otherwise if the prisoner had deposited it in the drawer, and had afterwards taken it" – and so no felony had been committed. Parliament quickly overruled this decision with the statute 39 Geo. III, c. 85 (1799), which made it a crime, punishable by up to fourteen years' transportation, for employees to appropriate goods entrusted to them by third parties for their masters.[54]

It was under this Embezzlement Act that the housekeeper Elizabeth Smith was charged and convicted at the Norfolk Assizes. However, because of the wording of the statute, Macdonald, the presiding judge at her trial, doubted whether it "could apply to a female servant." Following the androcentric pattern we have already identified in other legislation, the act stipulated that "any servant or clerk…[who] by virtue of such employment, receive or take into *his* [emphasis mine] possession any money, &c. such servant fraudulently embezzling the same

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[53] George P. Fletcher, "The Metamorphosis of Larceny," *Harvard Law Review* 89 (1976): 470-474; Stuart P. Green, "Property Offenses," *The Oxford Handbook of Criminal Law*, ed. Markus D. Dubber and Tatjana Hörnle (Oxford: Oxford University Press, 2014), 773-775.
[54] *R. v. Bazeley* (1799), 2 Leach 835, 168 Eng. Rep. 517; Burn, *Justice of the Peace*, 24th ed., Vol. 3 (1825), 220.

shall be deemed to have stolen it feloniously." Macdonald took the exclusive use of the male pronoun not as a generic but as an indication that the statute's coverage did not extend to women workers and for that reason he forbore passing sentence on Smith. Instead, he reserved the case for the opinion of the high court judges. Although they overturned Smith's conviction on the grounds that the overseer's failure to receive the sum in question was not sufficient proof of the housekeeper having embezzled it, they agreed unanimously that a "female was within the Act."[55]

On the one hand, this ruling shows that the ideological assumptions embedded in the sexist statutory language were not reflective of reality. Women workers might be linguistically omitted from employment legislation, but they were not omitted from its practical application. On the other hand, however, this case is proof that at least one judge in an actual trial was literal-minded enough to be confused about the statute's scope based on its androcentric wording. Perhaps Macdonald was the only judge to ever entertain such doubts and this was an isolated incident. Perhaps, though, magistrates in lower courts had also questioned whether this or similarly worded master and servant acts covered female servants. Like Macdonald, they might have concluded that the legislation did not apply to women. Their summary determinations in these instances would be very unlikely ever to reach the attention of the high court judges for correction. It is possible, then, that the semantic exclusion of female servants from the statutes sometimes entailed their actual exclusion from the law's coverage as well.

The Case Law

While employment law was a "creature of statute," it was also shaped by the decisions of the high court judges. Their interpretations of the legislation influenced its administration and

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[55] 39 Geo. III, c.85 (1799); *R v. Smith* (1813), Russ. & Ry. 267; 168 Eng. Rep. 795.

occasionally even precipitated the passage of new acts, as when *R v. Bazeley* (1799) prompted Parliament to criminalize workers' embezzlement. Like the statutes that they glossed, these high court rulings can be analysed through the lens of gender. On balance, the case law did more to discriminate against female servants than did the androcentric legislation. As *R v. Smith* (1813) demonstrated, the sexist statutory language was not actually meant to translate into the practical omission of women workers from the law's coverage – although, the circumstances that led to the high court hearing this case in the first place suggest that women's rhetorical exclusion may have been taken literally in some instances. Still, the statutes were supposed to apply to servants regardless of sex. However, the same cannot be said of several notable judicial rulings, particularly those that effectively excluded domestic servants from the provisions of employment law and those that stigmatized pregnant workers. Not all high court decisions in cases involving female servants were so clearly gender-biased, but those that were embedded women workers' inequitable treatment in the basic blueprints of the master and servant regime.

The Exclusion of Domestic Servants from Employment Law Coverage

Many cases involving female servants that wound up before the high courts were actually instances of disputed settlements. Under the terms of the Old Poor Law, paupers had a right to relief and maintenance in the parish where they were last 'settled.' One of the most common ways for men and women to acquire settlements was through a year of service in a particular place. These settlements by hiring produced a large amount of litigation, as parochial authorities, anxious to reduce the financial burden on their ratepayers, took to the courts to contest their legality. Many of these cases were sent on appeal to King's Bench, and so entered the annals of the law reports. They provide evidence about the doctrine of master and servant law, since it was

the details and conditions of hirings that were at issue. As Carolyn Steedman points out, the boundaries between poor law and labour law were permeable.[56]

Indeed, judicial rulings in settlement disputes could have important consequences for the application of master and servant law, as the precedent-setting case *R v. Inhabitants of Hulcott* (1796) shows. In September 1793, Joseph Scrivener of Potterspury in Northamptonshire hired Elizabeth Lamb to serve him for one year, working in the dairy but not milking the cows. Upon her "becoming insane" the following May, he took her before a magistrate who determined that she was "wholly unfit for service" and discharged her. Ten days later, Lamb was removed from Potterspury to the hamlet of Hulcott, where she had previously gained a settlement. Hulcott appealed the order at Quarter Sessions. Her removal was confirmed pending the opinion of King's Bench on the matter. Lord Chief Justice Kenyon and his fellow judges heard the case in 1796. The argument turned on whether or not the justice who had discharged Lamb had the authority to do so under the Statute of Artificers, since the order did not specify that she was a servant in husbandry. If the JP lacked jurisdiction over Lamb, then his discharge order was void and her service had in fact not been terminated before the fulfilment of her year's term – meaning that she had not lost her settlement by hiring in Potterspury, and should not have been removed to Hulcott. Lord Kenyon delivered the opinion of the court that, as it did not "appear on the face of this order that the justice had jurisdiction, the pauper was not legally discharged from her service, and consequently … the order of Sessions [removing her] must be quashed."[57]

There was more at stake in *R v. Inhabitants of Hulcott* (1796) than simply which parish would ultimately have to take financial responsibility for poor, insane Elizabeth Lamb – notably,

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[56] Carolyn Steedman, "Lord Mansfield's Women," *Past & Present* 176 (2002): 106, 114-115; Hay, "England," 77 n. 60.
[57] *R v. Inhabitants of Hulcott* (1796), 6 T. R. 583, 101 Eng. Rep. 716.

which kinds of servants were covered by employment legislation. As we saw in the Introduction, this was a point of contention in the eighteenth century. Kenyon's decision effectively excluded from coverage any workers whose occupations were not explicitly named in the Statute of Artificers or subsequent acts. Significantly, domestic servants and their employers were thereby deprived of summary remedies in employment disputes.[58]

This omission of domestic servants did not escape contemporary notice, either. Hay asserts that the 1796 decision added "country interest" to a pre-existing metropolitan desire for laws empowering magistrates to deal summarily with the conflicts arising between domestic servants and their masters.[59] It should be noted that earlier in the century, after chief justices Parker and Pratt argued for a more restrictive reading of the Statute of Artificers that went against prevailing theory and practice, Parliament intervened and passed several new acts over the following decades extending master and servant coverage to many trades.[60] Yet repeated attempts to enact similar legislation applying to domestic servants in the wake of *R v. Inhabitants of Hulcott* (1796) were met with failure, including a bill introduced by a Nottingham MP in 1801 "for the Better Settling of Disputes between Masters and Mistresses of Families and their Menial or Domestic Servants." Hay contends that gentlemen and noblemen opposed these bills because they were loath to allow their domestic servants to take them before JPs with complaints of unpaid wages or mistreatment, the way other (generally lower-status) employers were summoned by their workers.[61]

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[58] Hay, "England," 89.
[59] Hay, "England," 89.
[60] *R v. Helling* (1717), 1 Strange 8, 93 Eng. Rep. 350; *R v. Cleg* (1722), 1 Strange 475, 93 Eng. Rep. 643; among the most important statutes extending the coverage of master and servant law were: 7 Geo. I c. 13 (1720), 13 Geo. I c. 23 (1726), 20 Geo. II c. 19 (1746); Hay, "England," 87-88.
[61] Hay, "England," 89-91.

I argue that it was concerns not just of class but also of gender that excluded domestic servants from the coverage of employment legislation. As Steedman has shown, domestic service was a highly feminized occupation. Women accounted for more than three-quarters of the domestic labour force. Moreover, domestic service was also their most common work experience in this period.[62] As domestic servants, then, women were probably disproportionately affected by the restrictive ruling in *R. v. Inhabitants of Hulcott* (1796) excluding all occupations not specifically mentioned in the Statute of Artificers and subsequent acts. More masculinized trades were likelier to have been explicitly covered in the eighteenth-century legislation expanding the scope of master and servant law. For instance, the occupations listed in the statute 20 Geo. II c. 19 (1746) – "artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters" – employed more men than women.[63]

It is possible that the exclusion of domestic servants was the coincidental consequence of a more narrowly focused doctrine of employment law with roots in textualism rather than gender ideology. After all, the judges had quashed Elizabeth Lamb's original discharge order because it had failed to specify that she was a servant in husbandry, not because it had affirmed that she was a domestic servant. It is not even clear that Lamb was a domestic servant. Yet gender played a role in the fact that *R v. Inhabitants of Hulcott* (1796) reached the high court at all. As Steedman points out, the very nature of the work that women performed often blurred the line between domestic service and service in husbandry. For instance, the notebook of the JP Richard Stileman of Winchelsea records complaints by Sarah Roberts, who had hired herself to the yeoman Mr. King "as servant and to milk the cows," and Mary Lacy, an "indoor servant and dairymaid" to John Stoneham's wife. Lamb's own duties included work in the dairy – though not

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[62] Steedman, *Labours Lost*, 13, 38.
[63] 20 Geo. II c. 19 (1746).

milking the cows, a phrase that Steedman observes is underlined in the manuscript notes of the case "as if that might be the dividing line between domestic work and husbandry work."[64] Lamb had not been called a servant in husbandry because her labour as a woman defied discrete occupational categories. Kenyon had the opportunity to narrow the scope of employment law because of the nature of women's work.

Steedman has argued that the judges of King's Bench "had no trouble" in conceptualising women as workers. She contends that as they were forced to consider the sorts of tasks that domestic servants performed in the course of their debates over disputed settlements, they were confronted with the evidence that women constituted a workforce.[65] Yet this workforce of domestics was shunted outside the jurisdiction of employment law. On a theoretical level they were not conceptualized as workers at all. Domestic service was considered an appropriate occupation for (poor) women. After all, the skills and tasks of a domestic servant were not far removed from those of a wife.[66] Whatever the reality of the work performed by actual domestic servants, which might include agricultural labour, it was linked conceptually, even by the term 'domestic,' with the private familial sphere to which women properly belonged. It was so intrinsically associated with the feminine that male domestic servants were stigmatized as effeminate.[67] By placing domestic servants outside the coverage of the employment statutes, the decision in *R. v. Inhabitants of Hulcott* (1796) reinforced the notion that this 'female' occupation was not work in the same way that 'productive' masculine trades enumerated in the master and servant acts were.

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[64] Steedman, "Lord Mansfield's Women," 123-124; East Sussex Record Office (ESRO), AMS 6192/1, Justices' Notebook of Richard Stileman of the Friars in Winchelsea, February 7, 1824; June 3, 1824.
[65] Steedman, *Labours Lost*, 14, 30, 55, 106, 128.
[66] F. K. Prochaska, "Female Philanthropy and Domestic Service in Victorian England," *Historical Research* 54 (1981): 79.
[67] Brown, "Assessing Men and Maids," 16.

Perhaps the intention behind the ruling was not ideological. However, it is noteworthy that Chief Justice Kenyon was a conservative, devout Christian greatly concerned with morality and tradition. In *Pasley v. Freeman* (1789), he proclaimed that "[a]ll laws stand on the best and broadest basis which go to enforce moral and social duties."[68] Hay points out that he sought to "impose his deeply held moral convictions on English society," including in the realm of marriage law. He remarked that he wished adultery could be punished by death and opposed the separation of husband and wife, strongly affirming their legal unity in the precedent-setting case *Marshall v. Rutton* (1800) when he overturned Mansfield's expansion of the liability of separated married women to contract and be sued for debts.[69] It is not surprising that an evangelical with a profound commitment to conservative domestic morality would make a ruling consistent with the ideology of separate masculine and feminine spheres. In voiding the magistrate's discharge order in Elizabeth Lamb's case, he even went against the "general rule" he laid out seven years previously in *R v. Chichester Guardians* (1789), when debating whether Quarter Sessions had jurisdiction to quash an order of affiliation made against the reputed father of a bastard child, that "every intendment shall be made to support an order of justices."[70]

He also went against precedent and established practice. Hay observes that early in the eighteenth century, the high court judges' interpretation of the coverage of the Statute of Artificers had been "generously wide."[71] They presumed, unless it was definitively shown

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[68] *Pasley v. Freeman* (1789), 3 T. R. 51, 100 Eng. Rep. 450.
[69] Douglas Hay, "Kenyon, Lloyd, first baron Kenyon (1732-1802)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004; online ed, Oct 2009), [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/15431, accessed16 Feb 2017]; James Oldham, "Creditors and the Feme Covert," *Law and Legal Process: Substantive Law and Procedure in English Legal History*, ed. Matthew Dyson and David Ibbetson (Cambridge, Cambridge University Press, 2013), 223.
[70] *R. v. Chichester Guardians* (1789), 3 T. R. 496, 100 Eng. Rep. 697.
[71] Hay, "England," 87.

otherwise, that a worker was a servant in husbandry and thus covered by the Statute. For instance, in *R. v. London* (1704) they noted that if an order for wages had not explicitly mentioned that the two plaintiffs were retained for work in the Hampton Court gardens, but instead called them more generally "labourers" or "servants," then "the Court should have supposed them servants in husbandry."[72] As Hay remarks, this was a strong hint to magistrates to be less specific when recording workers' occupations in order to "avoid trouble" about their jurisdiction.[73] In *R. v. Wotton* (1713), an order for wages was removed by certiorari because the servant's petition stated that he was a coachman, not a husbandman. The judges decided that because the magistrate's order had not described the plaintiff as a coachman they would take no notice of the petition and confirmed the order for payment.[74] As late as 1777, Chief Justice Mansfield ruled that anybody working by the piece or for a set amount of time counted as a servant.[75] Kenyon's decision was clearly a significant doctrinal reversal.[76] According to precedent, it should not have mattered that Elizabeth Lamb was not explicitly referred to as a servant in husbandry. It should have sufficed that she was not described as having a different occupation.

Kenyon's decision in *R v. Inhabitants of Hulcott* (1796) can also be illustratively contrasted with Chief Justice Ellenborough's ruling a decade later in *Lowther v. Earl of Radnor* (1806). Ellenborough determined that the labourer James Sopp, who had contracted to dig and stean a well in exchange for payment by the foot, as well as Thomas Franklin, the assistant he employed, both fell within the scope of 20 Geo. II, c.19 (1746). After a list of specific trades

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[72] *R. v. London* (1704), 2 Salked 442, 91 Eng. Rep. 384.
[73] Hay, "England," 87.
[74] *R. v. Wotton* (1713), Sess. Cas. 11, 93 Eng. Rep. 11.
[75] *Hart v. Aldridge* (1774), 1 Cowp. 54, 98 Eng. Rep. 964.
[76] Hay, "England," 87-89.

covered by the statute there came the phrase "labourers for a certain time, or in any other manner."[77] Ellenborough declared that "the most obvious construction" of this wording and its application was "not…to confine it" to the "several enumerated employments." For, he reasoned, "unless these words, 'other labourers,' mean to comprehend a different description of persons from those before particularly mentioned, it is difficult to account for their insertion at all." In fact, he argued that their scope was "as general as may be," since the purpose of the act was to provide a "speedy, easy, and cheap" method of recovering wages for "certain servants and workmen, and…labourers in general."[78] This was a far more generous and inclusive interpretation of the coverage of master and servant legislation than Kenyon's in *R. v. Inhabitants of Hulcott* (1796). Perhaps it was easier to ascribe a broader meaning to the employment statutes when the workers in question were male labourers engaging in strength-intensive tasks that women were less likely to perform, such as excavating and paving a well.

Interestingly, Lord Chief Justice Denman came to the opposite conclusion about the definition of 'other' workers when faced with a domestic servant in *Kitchen v. Shaw* (1837). The plaintiff in this case was a teenage girl, who had engaged to be house servant to a gentleman named Christopher Hobson. After a few months they quarrelled over her wages, and she left his residence. Hobson then brought her up on a warrant before a magistrate named Shaw. The JP convicted her of absenting herself from her service before the term of her contract was completed and sentenced her under the statute 6 Geo. III, c. 25 (1766), which authorized single justices to commit runaway workers to bridewell for one to three months. The girl brought an action for false imprisonment against Shaw at the Cumberland Summer Assizes. She was non-suited on the grounds that the magistrate did have jurisdiction over her under the terms of the

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[77] 20 Geo. II, c.19 (1746).
[78] *Lowther v. Earl of Radnor* (1806), 8 East 113, 103 Eng. Rep. 287.

statute, which applied to "artificers, calico printers, handicraftsmen, miners, keelmen, pitmen, glassmen, potters, labourers, and other persons." When her appeal came before King's Bench, Denman found himself "compelled to say that the other persons are not all persons whatever who enter into engagements to serve for stated periods, but persons of the same description as those before enumerated." Moreover, he argued that the Statute of Artificers "expressly exclud[ed] domestic servants" via the wording of the eleventh negative qualification in the fourth section and that "one should naturally expect" that "[i]f any statute in pari materiâ had been designed to do away with this limitation…this would have been effected by plain words."[79]

Denman was referring to the stipulation in the Statute of Artificers that "every person" not "being lawfully retained in household or in any office with any nobleman gentleman or others, according to the laws of this realm…shall…upon request made…be retained; and shall not refuse to serve" in one of a long list of "sciences crafts mysteries or arts."[80] The construction of this enactment was convoluted to say the least. Justice Eyre remarked in a rather non-committal fashion in 1714 that the Statute did not "seem" to give magistrates authority to order payment of gentleman's servants, but added that nevertheless "they [did] it every day."[81] Denman's insistence on a narrow interpretation of the meaning of employment legislation, like Kenyon's, contradicted more than a century's worth of evidence that domestic servants could be construed as falling under the statutes' coverage even in the absence of "plain words" including them.

The effect of these decisions was to write female workers out of the jurisdiction of employment legislation not just grammatically, as we have seen the acts themselves did, but

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[79] *Kitchen v. Shaw* (1837), 6 Ad. & E. 729, 112 Eng. Rep. 280.
[80] 5 Eliz.1 c.4, s.4 (1562).
[81] *R v. Dalloe* (1714), Sess. Cas. 16, 93 Eng. Rep. 16.

substantively too. Of course, high court doctrine did not necessarily impact the actual administration of employment law. As Hay points out, magistrates might not have been aware of decisions reached in King's Bench. Even if they were, they might not have felt compelled to abide by them, especially given the general lack of oversight of their activity.[82] Steedman remarks that there is "abundant evidence" of justices believing or pretending to believe the convenient fiction that domestics were actually servants in husbandry so that they could continue to exercise jurisdiction over disputes between these workers and their masters and mistresses when approached by either party.[83]

Although the case law's erasure of women may often have been ignored in practice, it is nevertheless a revealing commentary on underlying attitudes toward female labour. The existence of women workers was obviously acknowledged on a practical level, but ideologically they were still treated as exceptions to the male norm whose work did not qualify them for the summary remedies of employment law. From 1796 on, in spite of popular demand, they were excluded from the coverage of the legislation by judges who broke with precedent to rule against them and by Parliamentarians who refused to reverse these decisions, as they had in the case of other trades, with new acts written in "plain words."

Women Workers, Relationships, and Pregnancy

Perhaps it is not surprising, given the theoretical reluctance to view women as workers in the same way as men, that the boundaries between service relationships and intimate or familial relationships were often blurred when it came to female servants. In the case of *Bradshaw v. Hayward* (1842), for instance, the plaintiff was seeking unpaid wages from the defendant, an

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[82] Hay, "England," 89, 91.
[83] Steedman, *Labours Lost*, 178, 217.

innkeeper, in whose house she had lived for several years, waiting on his customers and performing other acts of service. Hayward the innkeeper argued that no contract existed between them, and that she had actually cohabited with him as his mistress, not as his hired worker. The verdict given was in favour of the complainant.[84] Perhaps the jury disbelieved the innkeeper's claims entirely, or perhaps they had no trouble reconciling Bradshaw being Hayward's waged servant with her being his mistress as well. After all, in other instances a non-employment relationship subsisting between a woman worker and her master did not preclude her also being considered his servant, as settlement cases attest.

According to Burn, it was "clear that no nearness of relationship [would] prevent the gaining a settlement by hiring and service." Interestingly, the two reported cases he cited in support of this contention both involved fathers hiring their daughters. In *Chesham v. Missenden* (1714), the whole court held that Sarah Barnes had gained a settlement by living with her father John as his hired servant for a year in a little cottage upon the waste in the parish of Missenden. He took her on for 10 shillings annual wages, besides what she could get by her service and labour elsewhere. Sixty years later, the high court made a similar ruling in *R v. Chertsey* (1787). Jane Filly, who had been working for one Mr. Shirley in the Surrey parish of Chertsey for £4 a year, agreed three weeks before the end of her term to go live with her father in Thorpe, another parish in that county. Having recently lost his wife, Filly was in need of his daughter's service. He offered her board and lodging and to make up any difference between the amount she could earn by her own labour while also serving him, and the annual wage she would have received from her former master. Consenting to these terms, Jane lived with her father for upwards of a year, during which time she made approximately one and a half guineas by keeping fowls and

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[84] *Bradshaw v. Hayward* (1842), Car. & M. 591, 174 Eng. Rep. 648.

another two and a half guineas by going out charring and taking in plain work. At the end of the year, her father also gave her 10 shillings as an additional recompense for reaping with him in the harvest month. When Jane was later removed from Thorpe back to Chertsey, the order was appealed at Quarter Sessions and confirmed subject to the opinion of the high court judges. However, when the case came before Justices Ashhurst and Grose they quashed the removal order, declaring that her hiring with her father in Thorpe had been sufficient to gain her a settlement there.[85]

The courts had no difficulty with daughters being considered the servants of their fathers, even when it seems that they primarily earned their monetary income by different means. Both Sarah Barnes and Jane Filly had to go out and perform other tasks or take in additional work on top of caring for their fathers. Perhaps, by rewarding them with settlements – which Quarter Sessions had originally denied – the judges were encouraging young women to serve their parents this way. In these scenarios, the work they did that mattered from a poor law perspective was helping to look after their fathers, not going out charring or keeping fowls. They earned their settlements through the performance of 'natural' feminine duties. Tellingly, Jane Filly's father hired her in the aftermath of his wife's death. He wanted his daughter to step into a wifely role in his household. The lines between a servile and a filial or even spousal identity could become particularly blurred for women – a merger of statuses that the high courts were very willing to endorse.

The legal premise that a woman could indeed be her parent's servant had other consequences besides giving some fathers access to a relatively cheap source of labour in the form of their daughters. The service relationship between father and daughter – if it could be

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[85] Burn, *Justice of the Peace*, 21st ed., Vol. 4 (1810), 209-210; *Chesham v. Missenden* (1714), Bucks, Sess. Cas. 20, 93 Eng. Rep. 20; *R v. Chertsey* (1787), 2 T. R. 37, 100 Eng. Rep. 21.

satisfactorily proven to the court – also paved the way for families to collect financial restitution in the event of a daughter's pregnancy out of wedlock. Chief Justice Holt ruled in *Russell v. Corne* (1703) that although a man could not bring an action against another man simply for "assaulting his daughter and getting her with child," he could bring one "per quod servitium amisit." That is, a man could claim compensation from the reputed father of his daughter's baby if he could show that her pregnancy had occasioned the loss of her service to him. Such a loss, Holt declared, was "a great aggravation."[86]

Over the course of the eighteenth and nineteenth centuries, the high courts heard quite a few cases of parents bringing actions against their daughters' "seducers" *per quod servitium amisit*, with varying degrees of success. In *Postlethwaite v. Parkes* (1766), the plaintiff brought such an action against the defendant for impregnating his twenty-three-year old daughter while she was living with a man named Saul as his servant. Since her pregnancy rendered her "unable…to perform her service as she was used and ought to do," Saul discharged the woman and paid her wages in proportion to the amount of time she had already worked for him. Her father, Postlethwaite, received her "when nobody else would" and lodged and boarded her, maintaining her at his own expense during her lying-in. The plaintiff's counsel argued that the woman's master, Saul, had not sustained any damage on account of his servant's pregnancy because he had only paid her proportionate wages and dismissed her "as soon as she became unserviceable to him." On the other hand, Postlethwaite had a duty as her father to provide for her and did consequentially sustain damage. While she resided in his house, counsel insisted, she "must, in this case, be considered as a servant." The defendant's counsel agreed in principle that if a father maintained his daughter in his own house he was "intitled to her service" and could

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[86] *Russell v. Corne* (1703), 2 Ld. Raym. 1031, 92 Eng. Rep. 185.

bring an action for the loss of it. In this particular instance, though, she had been hired to another man and could not be considered her father's servant. The court, led by Mansfield, proposed a compromise, which was accepted, that the proceedings be stayed without costs on either side. Mansfield was clear that he was not offering this (non) resolution "upon any doubt, in point of law." Sir James Burrow, who wrote up the original report of the case, interpreted this statement to mean that while the Chief Justice did not believe Postlethwaite could maintain his action, he still wanted to spare him the payment of costs out of "compassion" for the injury that had been inflicted on his daughter by the defendant.[87]

This outcome was hardly a ringing endorsement of a father's ability to bring an action *per quod servitium amisit* in cases of a daughter's pregnancy, but neither did it establish a conclusive precedent against such actions, since Mansfield refused to state outright that Postlethwaite's claim could not be maintained. Three years later, the plaintiff in *Tullidge v. Wade* (1769) was much more successful. This case was originally tried at Assizes before Justice Gould. Tullidge, the complainant, was a maltster and keeper of a public house. The defendant Wade, an excise man, began courting Tullidge's thirty-year-old daughter with promises of marrying her. On this understanding, her family received him cordially in their home. When the daughter became pregnant, Wade did not follow through with his professed matrimonial intentions and Tullidge was deprived of her service and assistance in his business during her lying-in. The Assizes jury delivered a verdict in favour of the plaintiff and awarded him £50 damages. Serjeant Davy moved for a new trial on the grounds that this amount was excessive, and that the defendant's promise of marriage should have been inadmissible because the daughter might have maintained a different action against him for his broken pledge. When the case came before the

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[87] *Postlethwaite v. Parkes* (1766), 3 Burr. 178, 97 Eng. Rep. 1147.

Court of Common Pleas, the judges upheld the trial verdict unanimously. None of the judges found that the damages awarded had been unreasonable. Chief Justice Wilmot declared that these sorts of actions were brought "for example's sake" and that although the actual loss to Tullidge in this instance might not have amounted to the "value of twenty shillings, yet the jury have done right in giving liberal damages." Indeed, he would "not have been dissatisfied" if the damages had been "much greater." Justice Clive would not have thought £100 too much. As to the argument that the daughter's testimony about Wade's broken marriage promise should never have been allowed, the judges were confident that the Assizes jury had heeded Gould's instructions at the time to take no notice of it when calculating damages owing to her father for his loss. Justice Bathurst thought that if the evidence of the broken promise had swayed the jury, the damages they awarded would have been much more than £50.[88]

This case constituted a strong affirmation of a father's ability to maintain an action for the loss of his daughter's service against her 'seducer.' Furthermore, as James Barry Bird noted in his treatise on employment laws, it established that any act of service, "however trifling," was considered "sufficient" to prove that a daughter residing with her father was also his servant. Wilmot had after all asserted that it did not matter if Tullidge's real financial loss had only amounted to as comparatively small a sum as 20 shillings. He was still entitled to substantial damages because the punishment was meant to be an example and a deterrent to other philanderers. The implication was that the loss of the daughter's service was something of a legal smoke screen. Bird cut to the heart of the matter when he wrote that in instances such as these a

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[88] *Tullidge v. Wade* (1769), 3 Wils. K.B. 18, 95 Eng. Rep. 909.

daughter was considered her father's servant by the law "for the purpose of enabling the father… to recover damages."[89]

This generous interpretation of the circumstances that would support an action *per quod servitium amisit* was stated even more forcefully in *Bennett v. Allcott* (1787) – another case involving a thirty-year-old daughter living with her parents who was impregnated by a tax collector presenting himself as a suitor. Her father, the plaintiff, was a considerable farmer for whom she "occasionally did acts of service." The jury at the Hereford Assizes where the case was first tried gave a verdict in his favour with £200 damages. The matter came before the high court when a motion was made to set this verdict aside because the action could not be maintained where no contract for service existed. However, the judges clarified that there did not need to be any contract between the father and daughter if "acts of service" could be proved. Justice Buller declared that in "actions of this kind the slightest evidence [of service] is sufficient; even milking cows." He added that it was not "material" whether the daughter had been hired for a year or not, or whether she received any wages, "it being sufficient that she is a servant de facto."[90]

Despite the liberal understanding advanced in *Tullidge v. Wade* and in *Bennett v. Allcott* of the conditions under which a daughter could be considered her father's servant, the spectre of *Postlethwaite v. Parkes* still hung over actions *per quod servitium amisit*. The high court doctrine of the nineteenth century reaffirmed the more rigid interpretation of what constituted a servant, which had been implied but not stated directly by Mansfield in that case. In *Dean v. Peel* (1804), originally tried at the Lancaster Assizes, the plaintiff brought an action against the defendant for

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[89] James Barry Bird, *The Laws Respecting Masters and Servants; Articled Clerks, Apprentices, Journeymen and Manufactures*, 3rd ed. corrected (London: W. Clarke and Son, 1799), 5 n. (a).
[90] *Bennett v. Allcott* (1787), 2 T. R. 166, 100 Eng. Rep. 90.

the loss of his nineteen-year-old daughter's service due to her pregnancy. She had been living a few doors down from her father's home in Manchester with her brother-in-law Taylor, a publican, for whom she kept bar and acted as housekeeper in the wake of her sister's death. She did not receive any wages and might have left whenever she pleased, though Taylor told her that she could help herself to "what money she wanted" while her sister lay dead in the house. When the girl found out that she was expecting a baby, she returned to live with her father. He maintained her at his own expense after she applied to her brother-in-law for wages and he refused to pay any. Had it not been for her pregnancy, she would not have gone back to her father's home. Chambre, the Assizes judge, non-suited the plaintiff on the grounds that the daughter had no *animus revertendi* and was not serving her father at the time of her seduction. When the case came before the high court, Lord Ellenborough sided with Chambre.[91]

In the 1840s, the judges made similar rulings in two actions *per quod servitium amisit* involving women who had been impregnated by their masters and then returned to their parents' homes where they were cared for during their confinements and recovery. The plaintiff's daughter in *Blaymire v. Haley* (1840) was an eighteen-year-old who had been living as a domestic servant with the defendant, Haley. She had arranged with her father when she took the position that she would return to his house at the end of her term unless she proceeded immediately into the service of another person. The judges ruled that her father's action against Haley would not lie because she had been the defendant's servant, not the plaintiff's, and had not intended to go back to her father's residence at any definite time.[92]

Seven years later, the high court determined in *Davies v. Williams* (1847) that the plaintiff Margaret Davies' action could not be maintained because the implied relation of

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[91] *Dean v. Peel* (1804), 5 East, 45, 102 Eng. Rep. 986.
[92] *Blaymire v. Haley* (1840), 6 M. & W. 55, 151 Eng. Rep. 319.

mistress and servant did not subsist between her and her daughter Susannah at the time of the latter's "seduction." Susannah had returned home to her mother after the defendant Williams impregnated her during her employment with him. Davies' counsel argued that Margaret had indeed lost her daughter's service while Susannah was living with her, because she "had a right to it" at the time. Justice Coleridge interjected to ask how it appeared that any service would have been rendered if the seduction had not taken place. Counsel replied that although "it did not appear affirmatively," the contrary did not appear either, as it had in *Dean v. Peel* where the plaintiff's daughter had no intention of returning to her father's house before she became pregnant. The judges were not convinced. Justice Patterson proclaimed that if the relation of master and servant was contracted subsequently to the "seduction," it could not "give a right to sue in respect of an act done before the relation subsisted." If Margaret Davies could maintain her action, then so could "any ordinary master whose servant enters his service in a state of pregnancy consequent upon her seduction before entering his service." Coleridge chimed in to add that a master contracting with a servant who had already been 'seduced' was employing "a servant who is less valuable by reason of an antecedent occurrence: there is no consequential injury of which he can complain."[93]

These cases were not entirely comparable to *Tullidge v. Wade* and *Bennett v. Allcott*. In those instances, the daughters had not been working for other employers at the time they became pregnant. The key factor in a successful action *per quod servitium amisit* seems to have been residence more than actual service, though. As we have seen, the slightest evidence of "acts of service" was deemed sufficient to establish that a pregnant daughter worked for her father. The difficulty arose when she lived away from the parental home with another master. As *Rist v.*

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[93] *Davies v. Williams* (1847), 10 Q. B. 725, 116 Eng. Rep. 275.

Faux (1863) shows, the mere fact of being employed by a second person was not the problem. In that case, the plaintiff Rist was able to maintain an action against the defendant Faux, even though Rist's daughter Jane was working for Faux at the time as well. She did outdoor labour on his farm for weekly wages "during the usual hours" – that is, between 7 am and 6 pm from April through September, and from 8 am until dusk during the other months of the year. However, she continued to live with her father "as a member of his family." Between shortly after 6 pm in the evening and 7 am the following morning, she was "always…doing the work of the house, assisting in his domestic affairs, and attending on his wife who was in ill health." When Faux impregnated Jane, Rist was deprived of her services "for a long space of time." The jury at the Huntingdon Summer Assizes where the case was first tried delivered a verdict in favour of the plaintiff. The high court judges unanimously confirmed it when the matter was brought before them. Defence counsel claimed that one of Jane's two masters had "injured himself by debauching his own servant, since for all that appears this may have been done at some period of the day during which she was bound to serve him, and not during that when she was bound to serve her father." The judges were unconvinced, and asserted that the service did not need to exist in the "particular hour or moment" that the "wrong" was committed.[94]

Jane Rist's employment with another man did not impede her father's action for the loss of her service. It seems clear that it was her continued residence with her family that distinguished her case from that of Susannah Davies, who had been living with her master when he impregnated her. Both women were indisputably servants of other people at the time that they were "debauched," but Jane's father could more plausibly claim that she was also *his* servant than could Susannah's mother Margaret since Jane was still sleeping under his roof. Judges and

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[94] *Rist v. Faux* (1863), 4 B. & S. 409, 122 Eng. Rep. 513.

juries were quite willing to believe that a daughter living at home was serving her father. It stretched credulity too much, though, to allege that a daughter who was not resident in the parental home was still somehow her parent's servant.

Together, these cases of actions *per quod servitium amisit* reveal that when it came to enabling the punishment of men who fathered children out of wedlock, the high court was willing to construe daughters as their parents' servants on quite meagre evidence whenever it was at all plausible to do so. Of course, this generous interpretation of hirings – much less stringent than it was in settlement cases – was not meant to benefit these women as much as their fathers, who paid the expenses of their confinement and delivery, and the parish rate payers who might otherwise be responsible for maintaining the babies and their mothers. It was easy to conceive of women as workers when doing so eased the financial burden on men.

More than just judicial doctrine, though, these cases also showcase sexist assumptions about pregnant servants.[95] Tellingly, they were presumed to be unable to work. Pregnancy and labour – in one of its senses only – were considered antithetical. Actions *per quod servitium amisit* were after all predicated on the notion that pregnancy entailed the loss of the woman's service. Defence counsel in Jane Rist's case argued that Faux, her master, had "injured himself" by getting her with child. In *Davies v. Williams*, Justice Coleridge had referred to pregnant servants as "less valuable." However, the automatic equation of pregnancy with an inability to work was grounded less in fact than in ideology. In some instances, pregnant women might not have been able to perform all of their usual tasks, especially as their due dates neared. It is moreover true that most would probably need some time off to recover from delivery. Yet pregnancies last for nine months, and barring medical complications most women could likely

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[95] They demonstrate additionally that masters impregnated their servants relatively frequently, a point that will be explored at greater length in Chapter Two.

have kept working for substantial portions of this time. In *Dean v. Peel*, *Blaymire v. Haley*, and *Davies v. Williams*, the daughters in question all returned to their parents' homes from their employers' as soon as they found out they were expecting babies. At the latest, this probably would have been early in the second trimester, when chances are good they could have continued serving for weeks.

Some women certainly believed that they were capable of working in their conditions. Hannah Wright, the pregnant servant at the centre of a settlement dispute in *R. v. Inhabitants of Brampton* (1777), told the court when she was examined that she "was not half gone with child" when her master turned her away, and that she had been "willing to have staid her year out, if she might… and hoped she could have done the work of her place to the end of the year." She had no incentive to lie about her fitness for service, since "it was not material to her whether she staid or went" because her master had paid her the full year's wages when he dismissed her.[96]

R. v. Inhabitants of Brampton (1777) was a significant case both in terms of expanding employers' rights and circumscribing those of female servants particularly. When Hannah Wright's master Mr. Longsdon of Eyam, Derbyshire, discovered that she was pregnant three weeks before the end of the term for which he had hired her, he turned her away from his service, paying her the whole year's wages and half a crown over. She went back to her father's home in Ashover in the same county, from whence she was removed to Brampton, about eight miles away, where she had previously gained a settlement by hiring. Brampton appealed her removal. The case turned on whether or not Wright had earned a settlement in Eyam to supersede her last settlement in Brampton. The answer depended on whether or not Longsdon

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[96] *R. v. Inhabitants of Brampton* (1777), in Thomas Caldecott, *Reports of Cases Relative to the Duty and Office of a Justice of the Peace, from Michaelmas Term 1776, inclusive, to Trinity Term 1785, inclusive* (London: P. Uriel, 1786), 11.

had "acted either arbitrarily or fraudulently" in discharging her on his own authority. If he had, then her contract had not been legally dissolved and she had not lost her settlement in Eyam. If, however, he was within his rights to dismiss her without recourse to a magistrate, then she had forfeited her claim to poor relief in that parish and been removed to Brampton correctly. Lord Mansfield and his fellow judges determined that Longsdon did have authority to discharge Hannah Wright, because she was pregnant.[97]

This decision broke with precedent. Hitherto, high court doctrine of the eighteenth century and earlier emphasized that masters were not vested with the power of dismissing their own servants. According to the Statute of Artificers, no person could turn his or her servant away "unless it be for some reasonable and sufficient cause or matter to be allowed before two justices of the peace, or one at the least…to whom any of the parties grieved shall complain."[98] This was an important safeguard for poor workers, who earned settlements by serving for a full year. If employers were given free rein to dismiss their servants without magisterial oversight, they might discharge them on some invented pretext weeks or even days before the completion of their terms for the sole purpose of defeating their claims to settlement and poor relief. Moreover, the insistence on JPs sanctioning dismissals was also convenient for the high court judges. As Hay points out, parishes litigating settlement disputes had strong financial incentive to convince the courts that the paupers in question did not belong to them – and therefore strong incentive to make fraudulent allegations and representations. The judges had need of the best available evidence in order to evaluate the validity of workers' discharges, which had often occurred years before the cases were finally heard in court. Determinations made in these matters at the time by justices of the peace were some of the best evidence the judges could hope for. They had good

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[97] *R. v. Inhabitants of Brampton* (1777), Cald. 11.
[98] 5 Eliz. c. 4 (1562).

reason to encourage the creation of this proof by insisting that magisterial authorization was necessary to dismiss a servant.[99]

There were two recent precedents for this doctrine of dismissal. In *R v. Tardebigg* (1753), a male servant who had married a pregnant woman three-quarters of the way through his year was turned away by his master with a deduction from his wages after a justice of the peace refused to make an order for the discharge. The court ruled that this dismissal by the master was "illegal." They doubted very much whether marriage would have constituted a "reasonable cause of discharge" under the terms of the Statute of Artificers, but that point was moot since the magistrate who heard the complaint had not discharged the servant at all.[100] Then in 1773, Lord Mansfield ruled in *Temple v. Prescott* that a mistress, who had dismissed her wet nurse before the end of her year due to frequent indolence and violent fits of passion that disturbed her sleep and injured the woman's milk supply, had no jurisdiction to do so on her own authority. Mansfield made this judgement in defiance of the argument that the wet nurse's behaviour amounted to a reasonable – even necessary – cause of dismissal, and of the fact that it was apparently general practice in the metropolis for masters to dismiss their servants with a month's wages. He declared resolutely that "[n]o person shall be judge in his own cause; and this first principle could not be meant to be overturned by any law or usage whatsoever."[101] Four years later, however, he would not apply his own dictum in the case of Hannah Wright.

The authority invested in masters to discharge their own servants by Mansfield's ruling in *R. v. Inhabitants of Brampton* remained for the time being situationally specific. In general, Mansfield supported the principle that magisterial approval was required for a worker's

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[99] Hay, "England," 111 n. 192.
[100] *R. v. Tardebigg* (1753), Sayer, 100, 96 Eng. Rep. 817.
[101] *Temple v. Prescott* (1773), cited in Caldecott, p. 14-15, n.(c); Hay, "England," 111.

dismissal. His successor, the conservative and paternalist Lord Kenyon, strongly endorsed this traditional view as well. It was not until the early nineteenth century that Kenyon's successor Ellenborough ushered in a very different doctrine. We saw in the Introduction that his ruling in *Spain v. Arnott* (1817) was a strong ratification of an employer's right to discharge a disobedient servant without recourse to a JP. As Hay argues, this repudiation of the older policy was part of a larger transformation occurring in employment law, aligning it more and more blatantly with masters' interests.[102]

It is certainly noteworthy that some of the first steps taken down this path targeted female workers, decades before the employer-centric changes really started gaining steam. This was no accident. The ideological motivations behind Mansfield's decision in *R. v. Inhabitants of Brampton* were perfectly clear. He declared that Longsdon had been justified in dismissing Hannah Wright without application to a magistrate because forcing a master to keep a pregnant woman in his house "would be *contra bonos mores*; and in a family, where there are young persons, both scandalous and dangerous." Justice Willes concurred that "it would not be fit" to keep "such a servant" if the "master had daughters." Mansfield even went so far as to describe Hannah Wright's conduct in becoming pregnant out of wedlock as "criminal" – and he maintained that employers could discharge servants on their own authority when they had committed crimes.[103]

Interestingly, Kenyon would afterwards disagree. In *R. v. Inhabitants of Sutton* (1794), he asserted that a master whose servant had committed a crime could apply to a magistrate to have that servant discharged, "but if no such application be made, the relation of master and servant subsists." However, the issue of an employer's right to dismiss a worker for criminal behaviour

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[102] *Spain v. Arnott* (1817), 2 Stark. 256, 171 Eng. Rep. 638; Hay, "England," 109-115.
[103] *R. v. Inhabitants of Brampton* (1777), Cald. 11.

ought not to have come up in *R. v. Inhabitants of Brampton* at all, since Hannah Wright had committed no crime in spite of what Mansfield claimed. Counsel even reminded him that an "unmarried woman by being with child is not guilty of any crime, or even misdemeanour at common law." He remained unswayed.[104]

Mansfield was clearly prejudiced against unwed mothers. According to him, illegitimate pregnancy was "scandalous and dangerous" and merited immediate dismissal without recourse to a JP. It was a worse offence in his view than actually threatening or dangerous behaviour in a servant. After all, in *Temple v. Prescott* he had insisted that the wet nurse's violent fits of passion, which were intense enough to terrify her mistress and allegedly harm her milk supply, did not constitute sufficient grounds for her discharge unless by a magistrate's order. It was more pressing to rid the home of an unmarried pregnant woman than of an unpredictable and perhaps disturbed individual – so pressing that a master might take it upon himself to dismiss the former without the approval of a justice but not the latter. This denigration of unwed mothers was in keeping with Mansfield's disposition. His eighteen-century biographer John Holliday observed that one of the "virtues which [was] most conspicuous in [his] private character" was "a love of moral rectitude."[105] Or, in less approbatory terms, he was known for his "hatred of sexual impropriety."[106]

This hatred was not only directed at women. Hay points out that Mansfield was censorious of both the mothers and fathers of illegitimate children. For instance, in *R. v. Inhabitants of North Cray* (1785), Mansfield called the fathering of a bastard child a "criminal

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[104] *R. v. Inhabitants of Sutton* (1794), 5 T.R. 657, 101 Eng. Rep. 366; *R. v. Inhabitants of Brampton* (1777), Cald. 11; Steedman, "Lord Mansfield's Women," 127-128.
[105] John Holliday, *The Life of William Late Earl of Mansfield* (London: P. Elmsly and D. Bremner, 1797), 147.
[106] Hay, "England," 111.

act."[107] He also did not intend for his ruling in *R. v. Inhabitants of Brampton* to single out female servants alone. In his report of the case, Thomas Caldecott noted that the decision established the right of a master to dismiss a servant on his own authority for "*moral turpitude*; even though it be not such, for which the servant may be prosecuted at common law."[108] It was "moral turpitude," not just pregnancy per se, that Mansfield was targeting. Theoretically, workers of either sex could commit this offence. Mansfield himself admitted as much in *R. v. Inhabitants of Westmeon* (1781), when he assented to the argument of counsel that conduct "*contra bonos mores*…applied equally in the case of a man or woman servant" and confirmed that the example of a male worker fathering a bastard child fell "within the same rule."[109]

Whatever Mansfield's intentions, though, it is clear that 'moral turpitude' was interpreted much more broadly for female servants than for their male counterparts. In his *Complete Handbook* on master and servant law, A. H. Graham gave as examples of workers whose 'immorality' warranted dismissal: a clerk residing in his master's house who committed "an indecent assault on his master's maid;" a man-servant "guilty of immoral conduct with his master's maid-servant;" and an "unchaste" maid-servant.[110] It seems that in order to be guilty of 'moral turpitude,' men had to have sexual relations with their fellow workers, but all women had to do was behave 'unchastely' in any context. W. A. Holdsworth made this abundantly clear in his treatise on employment law: "Unchastity while in the house or family of the master will be sufficient to justify the dismissal of a female servant or governess; and the same may be said with respect to immoral conduct*, in the house* [emphasis in the original], on the part of a man

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[107] Hay, "England," 111; *R. v. Inhabitants of North Cray* (1785), 4 Doug. 243, 99 Eng. Rep. 862.
[108] Caldecott, 14, n. (c).
[109] *R. v. Westmeon* (1781), Caldecott, 133.
[110] A. H. Graham, *Master and Servant: A Complete Handbook Relating to the Law of Master and Servant* (London: Ward, Lock & Co., Limited, 1899), 52.

servant, tutor, or even a clerk, lodged and boarded in his master's family…. But the fact of a male servant having been the father of a bastard child before the master hired him, or being guilty of immorality out of his master's house, does not justify his dismissal."[111] Any sexual activity on the part of a female servant, whether in her master's house or not, so long as she continued to be employed by him – "in his family" – was reason enough for her summary discharge, whereas a male servant had to be acting 'immorally' in his master's very residence to be dismissed. Employers did not want their male workers to have sexual dalliances on their premises, especially with the maids, but they were not as bothered by the prospect of these men's sexual activities in other contexts. By contrast, there was no situation in which it was acceptable for a female servant to be 'unchaste.'

This obsessive regulation of female servants' sexuality – expressed in the punishment of male servants who had sex with maids as well as of the women themselves – was driven in part by concerns about household disruption but more urgently by fears of illegitimate pregnancies.[112] These fears had roots far deeper than the decision in *R. v. Inhabitants of Brampton*. Steedman declares that Mansfield's ruling "convinced servants and their employers for the next fifty years that pregnancy in a maidservant was grounds for lawful dismissal."[113] This is somewhat misleading. The determination may have convinced them that it was grounds for *immediate* dismissal, but in fact pregnancy had for more than a century been deemed sufficient reason for a discharge. The difference was that formerly a magistrate's order had been necessary. Chief

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[111] W. A. Holdsworth, *The Law of Master and Servant; Including that of Trades Unions and Combinations* (London: George Routledge and Sons, 1873), 75.
[112] Hill, *Servants*, 53-54. Of course, they were also fuelled by a cultural obsession with female sexuality and an evolving emphasis on motherhood and concomitant denial and denigration of female lust and desire. See for example Tim Hitchcock, *English Sexualities, 1700-1800* (Basingstoke: Palgrave Macmillan, 1997) and Kathleen Wilson, *The Island Race: Englishness, Empire, and Gender in the Eighteenth Century* (London: Routledge, 2003).
[113] Steedman, *Labours Lost*, 119.

Justice Heath had resolved in 1633 that pregnancy, whether it happened during the servant's term or was undisclosed at the time of hiring, was a "good Cause" for dismissal, but "the Master in neither case must turn away such a Servant of his own Authority."[114]

The impact of Mansfield's ruling on women workers was profound, even though the construal of pregnancy as an employment offence was not new in itself. Female servants could now find themselves lawfully dismissed by their masters for being pregnant without a hearing before a magistrate. Steedman contends that Mansfield's judgment "shape[d] the experience of so many nineteenth-century working women and their illegitimate babies, to say nothing of the numerous melodramatic plots that hinged on it."[115] It is impossible to quantify how many female servants were discharged by their employers for being pregnant post-1777. After all, these discharges did not make it into the pages of magistrates' notebooks since the magistrates no longer had to approve them. Steedman does not cite any examples of women being immediately dismissed by their employers for pregnancy after Mansfield's ruling, but Bridget Hill does. She finds evidence in diaries of masters and mistresses discharging their servants when they discovered them to be with child. In 1793, for instance, the Reverend James Woodforde dismissed his pregnant maid Molly, recording that "'in her situation…it is necessary for me to part with her as soon as possible."[116] Moreover, as we shall see in Chapter Two, 9 – or 90% – of employers' requests that justices discharge their pregnant servants in this dissertation's sources took place before 1777.

Thus, it is highly probable that female servants were disproportionately affected by Mansfield's decision, even if he meant it to encompass the 'immoral' actions of workers of both

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[114] Hay, "England," 78-79; Dalton*, The Country Justice* (1727), Chapter 73, p. 235.
[115] Steedman, "Lord Mansfield's Women," 130.
[116] Hill, *Women, Work and Sexual Politics,* 136-137.

sexes. Pregnancy was a particularly visible manifestation of 'immorality,' and one that was unique to women. This 'transgression' also had an economic component, since a poor unwed mother could become a parish charge, along with her illegitimate child. Magistrates and employers alike, as ratepayers in their communities, had incentive to spare their parishes the 'burden' of more paupers to feed and clothe by dismissing pregnant servants before they could gain settlements.

The cumulative effect of *R. v. Inhabitants of Brampton* (1777) and the many actions *per quod servitium amisit* was to stigmatize pregnant servants. They were considered to be "less valuable" workers incapable of performing their usual tasks, as the numerous pleas for financial restitution made by their fathers attest. Yet the automatic equation of pregnancy with loss of service was ideological. Hannah Wright and countless other women like her believed that they were still capable of fulfilling their duties even while they were expecting babies. *R. v. Inhabitants of Brampton* plainly exposed the true reason that pregnancy out of wedlock and continued service were deemed incompatible. Counsel arguing in support of Longsdon's dismissal of Hannah Wright on his own authority stated explicitly that it "is not her ability, but her criminal conduct, that must be the test; or otherwise a master might be obliged to keep a woman in his house for many months under these circumstances, though he were a clergyman, or had a wife and daughters."[117] Here was blatant acknowledgement that pregnant women were not physically incapable. Counsel admitted that a pregnant servant might still be able to work for "many months." Her "criminal conduct" – which, once again, was not actually criminal – was the real problem. The law did its best to debar pregnant women from working in order to punish unwed mothers for offending nebulous moral sensibilities. Motherhood under the wrong

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[117] *R. v. Inhabitants of Brampton* (1777), Cald. 11 at 12.

circumstances transgressed the bounds of proper feminine behaviour even more than did waged work.[118]

Conclusion

Master and servant law was not gender-neutral. Although in general the statutes that constituted the blueprints of the regime were meant to apply equally to male and female workers – with a few notable exceptions – their androcentric language had the effect of erasing women from their coverage. A tension existed between the reality of female servants and the ideological conviction that women were not meant to be workers. On a basic level, men were associated with labour and productivity, while women were associated with domesticity and the family. However much these associations ignored the actual experience of women working for wages, they were still incorporated to an extent into employment law. The semantic omission of female servants, along with the statutes that actively discriminated between the sexes by forcing men to work for longer portions of their lives, together conveyed the message that male labour, not female labour, was normative.

The case law accomplished a more substantive erasure of women workers from the coverage of the master and servant acts. *R v. Inhabitants of Hulcott* (1796) effectively removed domestic servants from the provisions of employment law. A labour force that was majority female was thus excluded from the use of summary remedies in their disputes with their employers. Another significant ruling in *R. v. Inhabitants of Brampton* (1777) allowed masters to discharge their pregnant servants under their own authority, without recourse to a magistrate. This decision was made decades before Lord Ellenborough struck a fatal blow against the

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[118] On the social and legal context of societal disapproval of unwed mothers, see for instance Mark Jackson, *New-born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester: Manchester University Press, 1996), 29-59.

traditional doctrine of dismissal in *Spain v. Arnott* (1817). Female servants thus disproportionately became some of the earliest targets of the increasingly inequitable employment regime. By investing masters with the power to discharge their pregnant servants, Mansfield's judgment in *R. v. Inhabitants of Brampton* stripped these women of one of the important safeguards offered by master and servant law. The ruling obviated the need to consult a magistrate, who might not have ordered the dismissal. It left female servants even more vulnerable to the whims of their employers. In essence, like *R. v. Inhabitants of Hulcott*, *R. v. Inhabitants of Brampton* removed these women from the jurisdiction of master and servant law.

The very foundations of employment law, then – the statutes and the high court doctrine – were built on ideological assumptions that tended to diminish and disadvantage women as workers. The entire edifice of master and servant law was gendered in its conception. By erasing female workers, by excluding them from coverage, and by stigmatizing pregnant servants, employment law sought to discourage labour exercised by women under the 'wrong' conditions – whether this was labour in bringing forth a bastard child or paid labour that disrupted the association of femininity with family life.

It is important to remember, however, that the justices of the peace responsible for the administration of this law, who operated with minimal oversight from the high courts and perhaps minimal legal knowledge and training as well, did not always act according to the principles and provisions laid out in the acts and prominent judicial decisions discussed here. The gender discrimination theoretically enshrined in the master and servant regime was not necessarily translated into the day-to-day application of the law. The remainder of this dissertation will explore the actual experience of female servants under employment law in order to determine the role that gender played in shaping its routine operation.

Chapter Two: Employment Offences

Despite an ideological antipathy to the notion of women's waged employment, expressed in the statutes and in case law, women did work in eighteenth- and nineteenth-century England. As magisterial notebooks and petty sessions records demonstrate, they were also involved in master and servant disputes. Some, such as the Kentish servant Mary Neal, brought grievances before the justices. In 1693, Neal charged her master with abusing her, turning her away before the completion of her term, and detaining her wages and clothing.[1] Others stood accused by their employers. Servant in husbandry Sarah Hart, for instance, ran away from her master Mr. Granide in 1812 "without any reason." She admitted to the JP Montague Pennington that she had not had any cause to complain and so he ordered her to return to her place with her wages abated as punishment.[2]

Using the Pre- and Post-Sentencing databases described in the Introduction, this chapter contextualizes the experiences of women like Mary Neal and Sarah Hart by offering a quantitative and qualitative analysis of the gendered administration of employment law. It focuses on grievances that fell under the purview of the master and servant statutes. The following two chapters examine offences that technically did not fall under these statutes – theft, embezzlement, and assault – yet still involved disputes between employers and their workers. This chapter reveals that male and female servants brought similar complaints before magistrates, though in differing proportions, and were charged with a comparable range of transgressions, with two notable gendered exceptions. Although a larger proportion of female than male servants in the dissertation's sources were plaintiffs, by a slim margin, the latter were slightly more likely to be successful in their complaints. On the other hand, male workers were

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[1] BL, MSS Add. 42598, William Brockman, July 6, 1693, p. 9.
[2] KHLC, U2639/O1, Montagu Pennington, January 2, 1812, p. 42.

treated more harshly as defendants than female workers were, though women who did receive the most severe punishments were granted less clemency than men after their sentences had been passed. Gender clearly shaped the application of employment law as much as it did its conceptual foundations.

Plaintiffs and Defendants

Women workers were hardly absent from master and servant disputes. As Table 2.1 shows, 1038, or 19%, of the 5590 employment cases in this dissertation involve female servants. A further 4411, or 79%, involve male servants, and 159, or 3%, involve workers whose gender could not be determined. The shares of cases involving male and female servants were very similar in both the Pre-Sentencing and Post-Sentencing Database, as Tables 2.2 and 2.3 indicate. Clearly, men accounted for the majority of workers in employment conflicts where legal intervention was sought. Still, female servants made up a substantial minority of the disputants.

	Number and Share of Workers
Female	1038 (19%)
Male	4411 (79%)
Unclear	159 (3%)
Total Cases	**5590**

Table 2.1: Number and Share of Workers of Each Sex in All Employment Disputes
The percentage in parentheses refers to the share of all workers comprised of servants of that sex. The sum of the number of workers of each sex exceeds the total number of cases because 18 cases involved both male and female servants. For this reason, the sum of the percentages is also 101% rather than 100%.

	Number and Share of Workers
Female	680 (19.5%)
Male	2664 (76%)
Unclear	159 (5%)
Total Cases	**3485**

Table 2.2: Number and Share of Workers of Each Sex in Employment Disputes in Pre-Sentencing Database
The percentage in parentheses refers to the share of all workers comprised of servants of that sex. The sum of the number of workers of each sex exceeds the total number of cases because 18 cases involved both male and female servants. For this reason, the sum of the percentages is also 100.5% rather than 100%.

	Number and Share of Workers
Female	358 (17%)
Male	1747 (83%)
Unclear	0 (0%)
Total Cases	**2105**

Table 2.3: Number and Share of Workers of Each Sex in Employment Disputes in Post-Sentencing Database
The percentage in parentheses refers to the share of all workers comprised of servants of that sex.

We will study variations in the share of cases involving female servants over the course of the period and in different regions in Chapter Five. For now, we turn to a comparative examination of gendered plaintiff and defendant ratios. This section draws mainly on the Pre-Sentencing Database. As we saw in the Introduction, the Post-Sentencing Database, consisting as it does entirely of inmates in houses of correction, contains almost exclusively workers who had been accused and convicted of employment offences. Including this data in my analysis of complainant and defendant rates would completely skew the results toward defendants. It is worth noting briefly here, however, that male servants in the Post-Sentencing Database were plaintiffs in 5 – or 0.2% – of all the entries. These cases – three instances of masters refusing to pay wages and two of employers beating their apprentices – will be discussed at greater length in this chapter's section on workers' grievances and in Chapter Four on assault.

Role	Female Servants	Male Servants
Complainants	316 (46%)	1226 (46%)
Defendants	307 (45%)	1349 (51%)
Both	0 (0%)	6 (0.02%)
Consensual	50 (7%)	72 (3%)
Unclear	7 (1%)	11 (0.04%)
Total	**680**	**2664**

Table 2.4 – Gendered Distribution of Servants' Roles in Employment Proceedings in Pre-Sentencing Database
The percentage in parentheses indicates the share of all servants of that sex comprised by each category. Complainants initiated hearings. Defendants stood charged with offences by their employers. The category 'both' refers to the small number of cases in which masters and servants made competing accusations against each other in the same proceeding. The category 'consensual' refers to those proceedings in which magistrates dissolved contracts between masters and servants who had already agreed between themselves to part before the completion of the term of hiring but required the official approval of a JP to legally end their employment relationship. Lastly, the category 'unclear' refers to those cases in which the detail provided was so scanty that it was impossible to tell whether the servant was the complainant or the defendant.

From the evidence of the Pre-Sentencing Database, summarized in Table 2.4, it seems that male and female workers involved in employment disputes were plaintiffs in equal proportions. Both sexes brought grievances 46% of the time (in 1226 and 316 cases respectively). However, male servants in employment disputes were defendants proportionately more often than female servants. They stood accused in 1349, or 51%, of their hearings, compared to women who were accused in 307 cases, or 45% of them. Not only were male servants in employment conflicts proportionately more likely to be defendants than female servants were, they were also proportionately more likely to be defendants than they were to be complainants. The opposite was true for women workers, although the margin of difference – just 1% – is very slim.

In a further 50 cases, or 7% of them, female servants were neither plaintiffs nor defendants, but participants in the (ostensibly) consensual dissolution of their contracts. Only 72 male servants, or 3% of them, fell into this category. These 'cases' were not adversarial in the

way that the majority of proceedings were, but rather came across as magisterial rubberstamping of decisions to part that had already been reached by masters and their workers before the end of an agreed-upon term of service. One hundred and nineteen, or 98%, of these contract dissolutions occurred prior to the turn of the nineteenth century, when labour and settlement law underwent transformations that made them more inimical to workers. As we saw in the previous chapter, paupers could gain settlements by serving in a parish for a year. Employers wishing to spare parish ratepayers the burden of supporting another pauper might conceivably dismiss a worker a few days or weeks short of the full year for the purpose of denying a settlement in that parish. The parish where the worker had previously been settled might then contest the case, since its ratepayers had a vested financial interest in proving that the hiring in the employer's parish had superseded the settlement in their own parish. In order to prevent such capricious dismissals of workers and minimize settlement disputes between parishes, a contract could only be terminated before its completion by order of a magistrate, even if the servant consented to be discharged. We have seen that Mansfield's ruling in *R. v. Inhabitants of Brampton* (1777), giving a master the right to turn away an unwed pregnant servant on his own authority, was an early first step on a path that ultimately led to the repudiation of this traditional doctrine of dismissal in *Spain v. Arnott* (1817).

Additionally, by the end of the eighteenth century, the concept of the 'exceptive hiring' was gaining ground over older notions that stressed the reciprocal obligations masters and servants bore to one another, including the duty of the master to maintain the servant even when there was no work available.[3] In the past, an employer might dispense with a worker's labour

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[3] Simon Deakin, "The Contract of Employment: A Study in Legal Evolution," Working Paper No. 203 (ESRC Centre for Business Research University of Cambridge, June 2001),13; William Blackstone, *Commentaries on the Laws of England* 2nd ed., Vol. 1 (Oxford: Clarendon Press, 1766-67), 425.

during slack times without voiding the contract of yearly hiring by which the servant gained a settlement. The new view, however, dictated that a master should retain constant control over the worker and that any 'exception' or interruption in the provision of service was grounds for the dissolution of the contract even before the end of the year – depriving the servant of a settlement. In *R. v. Inhabitants of Thistleton* (1795), Kenyon ruled that if "the master has once parted with his control over the servant, there no settlement is gained."[4] While the traditional doctrine still prevailed, though, employers and workers who wished to separate before the completion of the term of hiring needed the approval of a JP to do so. Therefore, requests to validate consensual contract dissolutions turned up from time to time in the pages of magisterial records kept before the end of the eighteenth century.

In 100 of these instances, or 82% of them, the justice did not record the reason that the servant and his or her master had agreed to part. Typically, these entries were quite perfunctory, as when William Brockman of Kent noted on October 30th, 1719 that he had "Allow'd Mary Martin's departure by consent of Parties from her…service with Anne Wife of Barth[olomew] Taylor on Consideration of 10s."[5] It is worth bearing in mind that the language of "mutuality" and "consent" could easily mask actual coercion and unwillingness. As Kussmaul has pointed out, these so-called mutual partings could be prompted by arguments, and we can only speculate on the degree to which a servant's 'consent' was forced. This categorization is therefore more semantic than necessarily substantive.[6]

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[4] *R. v. Inhabitants of Brampton* (1777), Cald. 11; *Spain v. Arnott* (1817), 2 Stark. 256, 171 Eng. Rep. 638; *R v. Inhabitants of Thistleton* (1795), 6. T.R. 185, 101 Eng. Rep. 502; Hay, "England," 112; Deakin and Wilkinson, *Law of the Labour Market*, 122-123.
[5] BL, MSS Add. 42598, William Brockman, October 30, 1719, p.169.
[6] Kussmaul, *Servants*, 33.

Occasionally, a rationale was offered for the termination of the contract. Most often, this was the unfitness or infirmity of the servant. For instance, Jane Diaper "consent[ed] to be discharged" because she was "in an ill state of health and unable to perform her service."[7] In some of these cases, the servant's consent seemed sincere. Thomas Pot agreed before William Brockman to depart his service with Anthony Gilpin "for that he is taken with a Lameness that he can't discharge his Worke and fears the further Wronging himself." He received a pound for the time he had been with Gilpin.[8]

In other cases, it is less clear if consent was genuine or manufactured. William Brockman allowed the discharge of James Friend from his service with Mr. George Clark, with "the said J. F.'s consent" and £2 2s 6d for three-quarters of a year's wages and board. Clark had up until the dissolution of their contract also been paying the surgeon, Mr. Carrell, to minister to Friend, who was obviously ill or hurt.[9] Employers at this time were supposed to maintain their workers through sickness or injury. Citing Dalton, Richard Burn informed magistrates that a servant retained for a year who happened "within the time of his service to fall sick, or to be hurt or disabled by the act of God, or in doing his master's business, yet the master must not therefore put such servant away, nor abate any part of his wages for such time."[10] Kenyon ruled as late as 1795 that a "master is bound to pay for medicines and attendance on his servant, while such servant remains under his roof and part of the family."[11] In Friend's case, following his

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[7] BL, MSS Add. 42599, Memorandum Book of Business Transacted as a JP by William Brockman, James Brockman, Rev. Ralph Drake Brockman, February 22, 1723, p. 23.
[8] BL, MSS Add. 42598, William Brockman, October 23, 1714, p.118.
[9] BL, MSS Add. 42598, William Brockman, July 31, 1721, p. 189.
[10] Burn, *Justice of the Peace*, 3rd ed. (1756), 624.
[11] *Scarman v. Castell* (1795), 1 Esp. 270, 170 Eng. Rep. 353; Hay, "England," 66-67. The obligation of an employer to maintain a sick or injured servant was being challenged by the last quarter of the eighteenth century, however. In 1785, a decade before Kenyon's decision, Mansfield ruled that a master whose servant boy had badly fractured his leg in a wagon accident – the limb eventually needed to be amputated – was not bound to reimburse the parish officer who paid for the boy's medical care. *Newby v. Wiltshire*

discharge, the junior overseers of Brabourne parish undertook to provide for the man, and to satisfy Mr. Carrell "for this time forward."[12] It seems that Friend was not yet cured and that Clark had grown weary of the financial burden of an indisposed and unproductive servant. Perhaps in order to escape his obligations, he, and other masters like him, had managed to persuade his stricken worker – gently or forcefully – that the dissolution of the contract was necessary.

It is noteworthy that three magistrates from one family, the Brockmans, recorded 114, or 93%, of all requests for consensual – or 'consensual' – discharges in this dissertation. The records kept by these men cover a nearly continuous hundred-year period in one location – Beachborough, in the Kentish parish of Newington, where the family had been seated since the end of Elizabeth I's reign. Sprawling among the sheep pastures in the southeastern part of the county, the Brockman estate was located one mile away from Folkestone, a deep-sea fishing community on the English Channel.[13] Although it had only one commission of the peace, Kent was partitioned into East and West for judicial and administrative purposes. The divisions had separate treasurers, accounts, rates, and Quarter Sessions – held respectively at Canterbury and

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(1785), 4 Dougl. 284, 99 Eng. Rep. 883. The court decided again in 1802 that a "master is not liable upon an implied assumpsit to pay for medical attendance on a servant who has met with an accident in his service." *Wennall v. Adney* (1802), 3 Bos. & Pul. 247, 127 Eng. Rep. 137. These challenges occurred well after the time of Friend's case, though.

[12] BL, MSS Add. 42598, William Brockman, July 31, 1721, p. 189.

[13] Norma Landau, *Justices,* 26, 175-176; Christopher Chalklin, "The Towns," *The Economy of Kent, 1690-1914*, ed. Alan Armstrong, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 1995), 210; Gordon Mingay, "Agriculture," *The Economy of Kent, 1690-1914*, ed. Alan Armstrong, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 1995), 52; Edward Hasted, "Parishes: Newington," *The History and Topographical Survey of the County of Kent* Vol. 8 (1799): 197-210. [http://www.british-history.ac.uk/report.aspx?compid=63474, accessed 15 July 2013].

Maidstone. Justices theoretically appointed for the entire county tended to act only within their own divisions.[14]

The Brockmans belonged to the East. William Brockman (1658-1741) was first named to the commission in 1688. He began recording his magisterial business in June 1689. In July 1702, he made a memorandum that he had gone to Canterbury Quarter Sessions and discovered that he had been left off Queen Anne's new commission – probably for political reasons, since he was a fervent Whig.[15] William seemed relieved by this development, claiming: "I desire to remain, as I am, Rather Thankfull, than any otherwise concerned" at being "discharg'd that (to me) Painful and Troublesome Employment."[16] Whether he was really grateful or not for the enforced respite, his banishment from the bench was not permanent. His recent biographer Sonya Wynne asserts that he was reappointed as a justice three years later. His notebook, however, did not resume until May 1713, when he recorded being sworn into the commission again.[17] Its entries ended in 1724, when he moved to London, though he lived for another seventeen years.[18]

Upon William's retirement from justicing, his second son James (1696-1767) was appointed to the commission. James took up William's notebook and filled it with his own records of magisterial activity for the next four decades, beginning in 1725. Though James and William were similar in temperament and ideology, the younger Brockman did not follow in his Whig father's footsteps as a Member of Parliament. William had pinned his political aspirations

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[14] Elizabeth Melling, "County Administration in Kent, 1814-191," *Government and Politics in Kent, 1640-1914*, ed. Frederick Lansberry, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 2001), 239, 250.
[15] Sonya Wynne, "Brockman, William (1658 – by 1742)," *The House of Commons, 1690-1715: Constituencies*, ed. David Hayton, Eveline Cruickshanks, Stuart Handley (Cambridge: Cambridge University Press, 2002), 331-336.
[16]BL, MSS Add. 42598, William Brockman, p. 100.
[17] Wynne, "Brockman, William," 332; BL, MSS Add. 42598, Register of Matters Transacted as Justice of the Peace from June 1689, p. 101.
[18] Wynne, "Brockman, William," 335.

on his son after suffering an electoral defeat himself in 1715, but James lost the by-election of 1728 for the constituency of Hythe because the Duke of Dorset would not support his candidacy and allegedly poisoned members of the corporation against him. Thirteen years later, the still resentful William instructed his son via his will never to stand for the constituency again. James obeyed his father's wishes. Eschewing a political career, he continued to carry out his JP duties at Beachborough. He had officially inherited the manor upon William's death, his older brother having predeceased them both.[19]

When James himself died, unmarried and childless, in 1767 at the age of 71, he devised the estate to his first cousin once removed, the Reverend Ralph Drake (1724-1781). Ralph, the grandson of James' maternal aunt, assumed the Brockman surname and coat of arms by an Act of Parliament in 1768, in compliance with the terms of James' will. He also married a Brockman, James' third cousin Caroline on his father's side. In 1770, possibly the year that he was first appointed to the commission, Ralph took up his benefactor's justicing diary. In it, he documented his own activity as a JP over the next eleven years, until he passed away in November 1781 at the age of 57. Although the notebook ended with Ralph's death, the Brockman family tradition of magisterial service did not. At least one of Ralph's twenty-four grandchildren went on to become a justice for East Kent, so that in the early nineteenth century, as there had been more than one hundred years earlier, there could be found presiding at Beachborough a magistrate named William Brockman.[20]

The Brockmans were obviously atypical in the number of requests for contract dissolutions that they dealt with, since most of the magistrates in the dissertation's sources

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[19] Sir Bernard Burke, *A Genealogical and Heraldic History of the Landed Gentry of Great Britain and Ireland,* 4th ed., Vol. 1(London: Harrison, Pall Mall, 1862),155; Wynne, "Brockman, William," 335.
[20] Burke, *Genealogical and Heraldic History*, 4th ed., Vol. 1 (1862), 155; Landau, *Justices*, 175-176.

received none. Consensual partings accounted for 27, or 13%, of William's employment cases; 7, or 18%, of Ralph's; and 80, or fully 54%, of James's. It is possible that masters and servants in the area around Newington in Kent were particularly likely to want to be released early from their contracts. However, the JP Sir Wyndham Knatchbull (1699-1749), a contemporary of James, lived within a day's walk of the Brockmans and did not record any applications for consensual discharges.[21] Another possible explanation is that the Brockmans had a reputation for being sticklers about the legal requirement to have a magistrate end a contract even if both the worker and the employer consented to its termination. Perhaps employers often took it upon themselves to dismiss their servants without recourse to a justice, but in this particular corner of southeastern Kent they felt they could not get away with it. If this was the case, we might expect to find in the Brockman records a disproportionately high share of complaints from workers about being turned away by their masters before the completion of their terms.

All three Brockmans actually did hear an above average proportion of these grievances. While accusations of being turned away prematurely made up 170, or 10%, of workers' complaints overall in the Pre-Sentencing Database, they accounted for 21, 12, and 2 – or 19%, 29%, and 14% – of those brought before William, James, and Ralph respectively. If employers knew that servants they dismissed were likely to find a sympathetic justice at Beachborough when they complained, they might have been more inclined to seek out the Brockmans beforehand to approve the contract termination instead of attempting to (illegally) put their workers away themselves. Figure 2.1 offers some support for this theory. A spate of grievances about being turned away did precede the relative onslaught of requests for contract dissolutions.

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[21] Landau, *Justices,* 175-176.

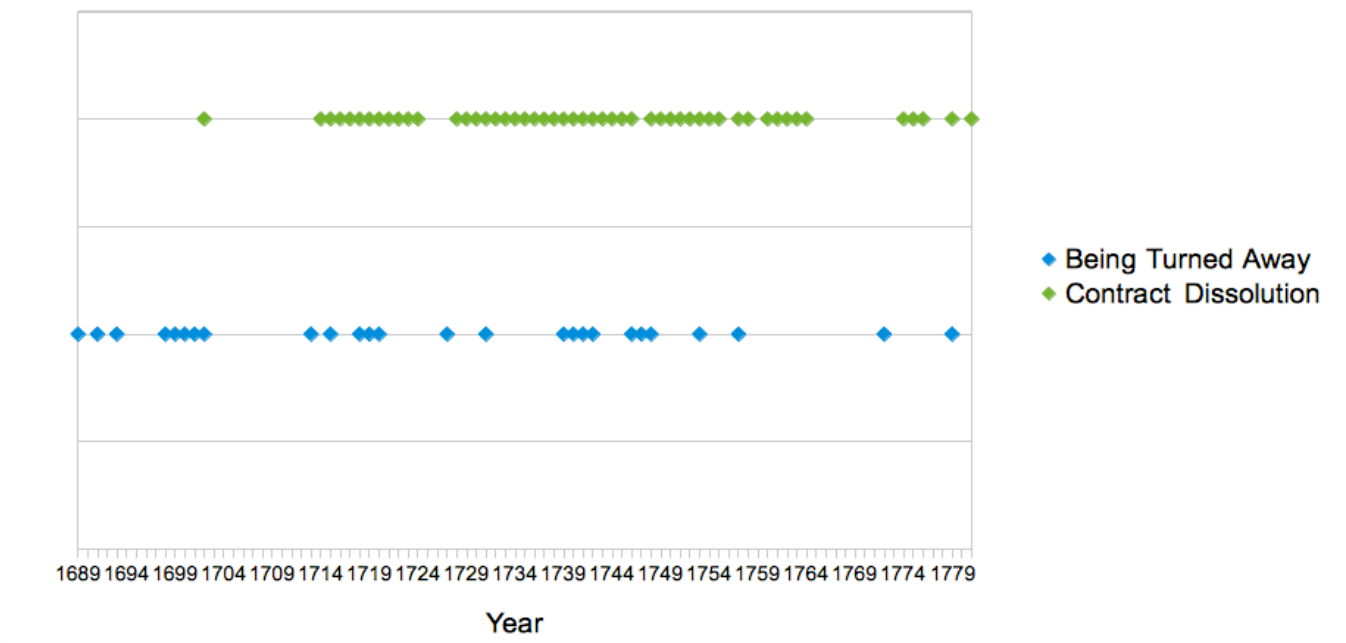

Figure 2.1 – Chronology of Complaints and Requests for Contract Dissolutions Heard By All Three of the Brockmans

However, there are several problems with this explanation as well. The applications for consensual discharges began in earnest after the eleven-year gap when William Brockman, left off the commission, was not acting as a magistrate. It is not terribly likely that any reputation he might have acquired in his early justicing days for being peculiarly sympathetic about pre-term dismissals would have survived more than a decade of inactivity. Moreover, it does not seem probable that William's hypothetical renown for compassion would have influenced the caseloads of James or especially of Ralph years later. There is no indication that, before they began to receive requests for contract dissolutions, either James or Ralph had dealt with enough grievances about being turned away to have built up their own reputations for sympathy – reputations that might have triggered those requests. Figure 2.2 (below) shows clearly that James heard requests for contract dissolutions virtually from the start of his magisterial career, and continued to receive them on a fairly constant basis thereafter, with no apparent relationship to the much more infrequent complaints he heard of servants being turned away by their masters.

Furthermore, high shares of complaints about dismissals do not by themselves confirm that the Brockmans actually were particularly sympathetic in these cases. The only recorded outcome in the majority of such instances was the issuing of a summons or warrant for the offending employer to appear and answer the charge.

Figure 2.2 – Chronology of Complaints and Requests for Contract Dissolutions Heard By James Brockman

Finally, this theory assumes that most cases of supposedly mutual requests for contracts to be dissolved were actually not consensual. The implication is that the terminations came at the instigation of employers, who, if the Brockmans had not ordered the discharge of their servants, would have resorted to turning them away on their own authority. Yet we have seen that some workers, at least, seem to have genuinely agreed to their dismissals – such as Thomas Pot, who was afraid of exacerbating his lameness. It is therefore difficult to maintain that the high shares of contract dissolutions recorded by the Brockmans were the result of masters in the

neighbourhood of Beachborough being cowed into compliance with the letter of the law, who would otherwise have taken it upon themselves to discharge their unwanted servants.

However, even if there is no causal correlation between complaints about being turned away and requests for contract terminations, the possibility that some 'consensual' discharges were actually not consensual suggests another potential explanation for the disproportionate share of contract dissolutions heard by James Brockman in particular. James alone documented 80, or 65%, of all the 'mutual' applications for discharge in this dissertation. We have seen that these requests actually made up a majority of the employment cases he dealt with. Yet this atypically high share may reflect his personal recording style more than the actual number of consensual contract terminations in mid-eighteenth-century Newington. For instance, James noted on May 9, 1748, that he had discharged Sarah Penny from her service with Thomas Fagg. No mention is made of any precipitating factors behind the dissolution. However, the following day, James issued a recognizance for the putative father of Sarah Penny's bastard child to appear at the next Quarter Sessions.[22]

It seems clear that Penny's master dismissed her because she was pregnant. As we saw in Chapter One, pregnancy had long been considered sufficient grounds to terminate a contract, but prior to Mansfield's 1777 ruling a magistrate's authorization was still required for the discharge. The wording of James' entry disguises the true reason behind Penny's dismissal and makes it seem instead like the mutual decision of both master and servant. Perhaps the parting was mutual and Penny really did consent to being turned away. The point remains, though, that James' note keeping style downplayed any sources of conflict between workers and their employers, which other JPs might have recorded more explicitly. Perhaps it was a style he inherited from his father

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[22] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, May 9, 1748, p. 62; May 10, 1748, p. 62.

William, along with his justicing notebook. James' heir Ralph, who took up the same notebook in turn, might have adopted it as well. If this is indeed the case, the unusually high share of requests for dissolutions found in the pages of the Brockmans' records could simply be a product of their idiosyncratic clerical technique.

Whatever the explanation for the Brockmans' atypical caseloads, their impact on the statistics can be assessed by removing them from the Pre-Sentencing Database sample. The recalibrated defendant and plaintiff ratios for workers of each sex, excluding the anomalous Brockman sources, are given in Table 2.5. A comparison with Table 2.4 shows that the biggest changes came in female servants' rates as defendants and as consenters to contract dissolutions. Proportionately, women and men in employment disputes are also now almost equally likely – or unlikely – to be involved in 'consensual' discharges.

Role	Female Servants	Male Servants
Complainants	263 (48.5%)	1112 (46%)
Defendants	275 (51%)	1268 (53%)
Both	0 (0%)	6 (0.02%)
Consensual	1 (0.02%)	7 (0.03%)
Unclear	3 (0.06%)	9 (0.04%)
Total	**542**	**2402**

Table 2.5 – Gendered Distribution of Servants' Roles in Employment Proceedings in the Pre-Sentencing Database Excluding the Brockmans' Caseloads

Since the share of female servants requesting contract dissolutions in Table 2.4 was nearly double that of male servants making similar appeals, it seems that the Brockmans were especially apt to 'consensually' discharge women. Ralph Drake Brockman actually dissolved proportionately more contracts of male than female servants, but the reverse is true for both

William and James Brockman, whose caseloads were also larger than Ralph's.[23] James in particular 'consensually' discharged a large share of women workers. Requests for dissolutions accounted for 37, or 60%, and 43, or 51%, respectively of all his cases involving female and male servants. James might have discharged proportionately more female than male workers because in addition to reasons such as illness, lameness, and quarrels that might prompt men and their masters to part – reasons masked by James' particular unelaborated record-keeping style – in the case of women, there was also pregnancy. It is possible that some or even many of the 'consensual' discharges of female servants were actually instances of pregnancies, like Sarah Penny's, that James chose not to document as such.

The other noteworthy change in the statistics brought about by the removal of the Brockmans' caseloads is in the share of women workers who are defendants. Like men, they are now defendants more frequently than they are plaintiffs. This lends support to the theory that many of the allegedly consensual requests for contract dissolutions were actually instigated by employers who felt that their servants had committed some sort of infraction – pregnancy or otherwise – that the Brockmans chose not to record. Since the omission of the Brockmans' notebook from the quantitative analysis makes a bigger difference in female workers' shares as defendants than in their shares as plaintiffs – and no difference at all in male workers' shares as complainants – it appears that many of the servants whom the Brockmans recorded as consenting to their own dismissals would have been recorded as defendants by other magistrates, including any pregnant women. Male servants in employment cases, however, are still defendants slightly more often, proportionately, than their female counterparts.

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[23] Ralph Drake Brockman granted contract dissolutions to two female workers and five male workers, accounting for 15% and 19% respectively of the total employment cases that he heard involving servants of each gender. William, on the other hand, dissolved the contracts of 10 female servants and 17 male servants, representing 16% and 11% of the total cases he dealt with involving each sex.

Male workers were also, in general, more likely to be treated harshly than women workers when they were defendants. With the exception of a small number of cases of transportation, which will be discussed in Chapter Three on theft and embezzlement, the most severe punishment that workers in my sources received was a stint in the house of correction.[24] Overall, male servants who stood accused of employment offences were incarcerated in 253, or 19%, of cases, and female servants in 36, or 12%, of them in the Pre-Sentencing Database. These 36 women workers also made up just 12% of all inmates committed for master and servant transgressions in this dataset, though women accounted for 307, or 18%, of all defendants. They were therefore underrepresented among those imprisoned for employment crimes.

Offence	Female Servants	Male Servants
Assault	1 (3%)	6 (2%)
Cruelty to Animals	0 (0%)	3 (1%)
Destruction of Master's Property	3 (8%)	1 (0.4%)
Disobedience/Disorderliness	0 (0%)	12 (5%)
Drunkenness	0 (0%)	4 (2%)
Theft/Embezzlement	7 (19%)	46 (18%)
Leaving Work Unfinished	0 (0%)	5 (2%)
Misbehaviour	1 (3%)	14 (6%)
Neglecting Work	2 (6%)	11 (4%)
Running Away	19 (53%)	143 (57%)
Refusing to Come Serve	2 (6%)	4 (2%)
Other	1 (3%)	4 (2%)
Total	**36**	**253**

Table 2.6 – Number and Share of Servants of Each Sex Committed to the House of Correction for Different Employment Offences in the Pre-Sentencing Database

Table 2.6 indicates that male servants were also incarcerated for a greater variety of offences than their female counterparts. They could be sentenced to the house of correction for a plethora of misdeeds, from leaving work unfinished to harming their masters' horses. As we shall see later in this chapter, men and women generally committed the same kinds of

[24] No servants in this dissertation's sources received death sentences for employment-related offences.

transgressions. Therefore, the fact that male workers were imprisoned for a wider range of infractions highlights how they were likelier than female workers to be punished harshly for their employment crimes, whatever those might be.

However, there is some indication that post-sentencing, male servants were treated more leniently than female servants. As demonstrated by data from the Stafford House of Corrections register, summarized in Table 1.4 in the Introduction, workers of both sexes were committed for terms of one month or less in almost equal proportions, but male servants were sentenced to terms of three months twice as often, proportionately, as female servants.[25] Yet male workers were also more likely than their female counterparts to be released from bridewell early. Overall, they were liberated before completing their terms of incarceration in the Stafford House of Corrections in 283, or 35% of cases, compared to 33, or 24%, for female servants. This discrepancy cannot be attributed to the fact that male workers received longer sentences than women workers proportionately more often. It is true that the chances of early release did increase as the sentence length increased. Yet this was the case for both male and female servants. As Table 2.7 (below) reveals, men were proportionately more likely than women to be freed early no matter the length of the term for which they were committed. Male servants sentenced to terms of less than a month were proportionately much more likely than female servants to be granted early release, despite the fact that workers of both sexes received such short sentences in equal proportions. The difference in the shares of men and women sentenced to less than a month who were released early was even greater than the difference between the shares of men and women sentenced to three months who were released early. Moreover, Hay

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[25] One hundred and nine female servants, or 78% of them, and 623 male servants, or 79% of them, received sentences of one month or less in the Stafford House of Correction. Ninety-nine male servants, or 12% of them, received sentences of three months, compared to 8, or 6%, of female servants.

has also found that men were more likely than women to be let out of the house of correction before the completion of their terms.[26] Although female servants were committed to the bridewell less frequently than male servants, both absolutely and proportionately, they were more likely to remain in it for the full length of their sentence once they arrived.

Length of Sentence	Female Servants	Male Servants
Less Than One Month	1 (8%)	17 (25%)
One Month	15 (16%)	137 (25%)
Two Months	10 (56%)	45 (75%)
Three Months	5 (62.5%)	80 (81%)
Other Amount of Time	2 (50%)	4 (29%)
Total	**33**	**283**

Table 2.7 – Percentage of Servants of Each Sex Released Early by Length of Sentence in the Stafford House of Corrections, 1792-1814
The percentages in parentheses indicate the share of all inmates of each gender sentenced for that length of time who were released early. Source: SRO, D(W)/1723/1-2.

Part of the explanation for this trend might lie in the fact that textile workers formed a much larger share of female than of male servants sent to the house of correction. As we shall see in Chapter Five, women employed in the textile industries were particularly prone to be treated harshly for employment offences. In the Pre-Sentencing Database, women committed to bridewell were textile workers in 11, or 31%, of cases, whereas incarcerated men were textile workers in just 7, or 3%, of cases. In the Post-Sentencing Database, textile workers made up 36, or 10%, of female inmates and 37, or 2%, of male inmates. While 10, or 38%, of male textile workers in the Stafford House of Correction were released early, only 8, or 25%, of female textile workers were. It seems that female servants who were incarcerated, such as textile workers, were women believed to require especially stringent disciplinary measures. Having truly 'deserved' their punishments, in the eyes of the masters and magistrates who prosecuted

[26] Hay, "England," 97.

and sentenced them, they were therefore less likely to be released early than male servants who were imprisoned more readily and routinely but perhaps for less perceived cause. It is also possible that masters were more anxious to get male textile workers, who were fewer and performed more 'skilled' tasks than their female counterparts, back to work faster, while they could afford longer deterrent sentences for more numerous 'unskilled' women workers.

Servants' Complaints

On July 27, 1695, a woman named Anne Wilcox appeared before the Warwickshire magistrate Sir William Bromley to make an extraordinary confession. "Pretending great penitence," she admitted that at the last Lent Assizes she had falsely sworn against Mr. Smith, a Coventry surgeon, in a trial between him and her master Thomas Avery, a Kenilworth weaver. Avery had promised to give her a new suit of clothing, and to forgive a debt of twelve shillings he claimed that she owed his sisters, if she would testify that she had heard Smith vowing to frame Avery for his wife's death in revenge for Avery suing him. At first Anne refused, but Avery's bribes and "frequent threats" finally persuaded her to go through with the lie. It seems that Avery retaliated against his servant for betraying his machinations, because two weeks after she unburdened her conscience to him, Bromley bound Avery over to appear at the next Quarter Sessions for detaining Anne's wages. At the same time, he also discharged her from Avery's service because she had been suborned to "commit wilful & corrupt Perjury."[27]

[27] WCRO, CR103, Sir William Bromley, p. 61-62.

Wage Claims

This case was obviously atypical in its level of intrigue. Bribery, false testimonies, and a servant's remorseful revelations were not customary features of employment disputes. Yet aside from its unusually dramatic context, the case was not actually that different from the more mundane workers' complaints with which magistrates routinely dealt. Masters did not as a matter of course refuse to pay their servants' wages in retribution for their incriminating confessions, but they withheld them often enough for other reasons. The majority of grievances brought by workers of both sexes in the Pre-Sentencing Database were for unpaid wages. As Table 2.8 indicates, these claims accounted for 177, or 56%, of female servants' complaints and 942, or fully 77%, of male servants'. They also made up 3, or 60%, of male workers' (very small number of) prosecutions in the Post-Sentencing Database. Anne Wilcox may have been unique in being incited to perjure herself, but she was certainly not alone in having her pay detained.

	Women	**Men**
Withheld Wages	177 (56%)	942 (77%)
Assault	52 (16%)	88 (7%)
Assault and Withheld Wages	16 (5%)	22 (2%)
Turned Away Early	35 (11%)	36 (3%)
Turned Away Early and Withheld Wages	23 (7%)	75 (6%)
Conditions of Service, Including Poor Food	4 (1%)	53 (4%)
Other	3 (0.9%)	4 (0.3%)
Unclear	6 (0.2%)	6 (0.4%)
Total	**316**	**1226**

Table 2.8 – Servants' Complaints in Pre-Sentencing Database
The percentage in parentheses indicates the share of all the complaints made by workers of each sex comprised by that particular category of grievance.

The ability to order recalcitrant masters to pay wages was clearly one of a justice's most important functions in the eyes of servants, and one of which they made frequent use. Yet, as with many aspects of employment law and its application, this ability was the subject of some contention and confusion. The Statute of Artificers empowered JPs to rate and settle wages. As

the nineteenth-century editors of a guidebook for justices observed, it was a "legal construction" arising from this dispensation that they could also order the payment of wages.[28] In *R v. Gouche* (1701), the judges upheld an order made on the titular Gouche to pay his servant for work in husbandry, noting: "Though the statute gives [magistrates] the power only to set the rate for wages, and not to order payment; yet, grafting hereupon, they have also taken upon them to order payment; and the Courts of Law are indulgent in remedies for wages."[29]

Nevertheless, as we have seen, there was widespread uncertainty about which types of workers were covered by the Statute of Artificers and thus could be awarded wages. In *R v. Champion* (1691), the judges quashed an order of two JPs compelling the appellant to pay wages owing to his day-labourer, determining that "the justices of peace have no authority concerning the wages of servants, but only of such who are hired by the year, according to the [Statute of Artificers], and who are hired in the service of husbandry… for the statute takes no notice of any other service; and the justices have no power concerning wages, but what is given by that stat[ute]."[30] Such narrow interpretations of the occupational coverage of the Statute of Artificers are puzzling, considering that the preamble to Section 15 referred to the wages that "servants, labourers, and artificers, either by the year or day, or otherwise, shall have and receive, &c."[31] Nevertheless, doubt about the coverage of the Statute abounded, especially with regard to industrial workers. This confusion gave rise to the feeling that the existing employment laws were "'insufficient and defective.'" Thus, 20 Geo. II, c.19 was passed in 1747, giving magistrates jurisdiction over disputes between employers and "servants in husbandry, who shall

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[28] William Eagle and John Mee Mathew and J. L. Jellicoe, Esquire, eds. *The Justice of the Peace and County, Borough, Poor Law Union and Parish Law Recorder* Vol. 3, (London: Henry Shaw, 1839), 319.
[29] *R v. Gouche* (1701), 2 Salkeld 441, 91 Eng. Rep. 383.
[30] *R. v. Champion* (1691), Carthew, 156, 90 Eng. Rep. 695.
[31] Eagle, Mathew, and Jellicoe, eds, *Justice of the Peace*, Vol. 3 (1839), 319.

be hired for one year or longer…artificers, handicraftmen, miners, colliers, keelmen, pitmen, glassmen, potters and other labourers employed for any certain time, or in any other manner" whether or not their wages were rated. This authority included the power to order the payment of wages.[32]

However, even before the passage of the 1747 act, some justices took it upon themselves to exercise this power, as the judges in *R. v. Gouche* had noted. Two hundred and thirty-five wage claims in the Pre-Sentencing Database, or 19% of them (excluding claims for wages made in conjunction with other complaints, such as accusations of assault) originated prior to 1747, including Anne Wilcox's. Of these cases, only 52, or 22%, definitely involved agricultural workers. While the occupations of many wage claimants were not specified, in other cases it was perfectly clear that they did not work in husbandry. For instance, William Brockman granted a warrant on the carpenter John Hobb's complaint that John Meers, another carpenter, refused to pay him wages due.[33] Ipswich magistrate Devereux Edgar ordered Robert Downing to come before him and show cause why he did not pay the wages of John Bretton for "day labour burning lime…unless paid upon sight."[34] He had taken the same action a month earlier when Joseph Piggot claimed that Thomas Byham had not paid him for threshing corn.[35] Clearly, Edgar did not differentiate between servants in husbandry and other labourers when it came to requests for wages.

Throughout our period, then, despite confusion about the extent of their jurisdiction in wage claims, justices were indeed acting on them. Unfortunately, the results of their actions were

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[32] Deakin and Wilkinson, *Law of the Labour Market*, 63.
[33] BL, MSS Add. 42598, William Brockman, July 3, 1721.
[34] Suffolk Record Office (SuffRO), HA247/5/4, Entry Book of Devereux Edgar of Ipswich as Justice for the Peace for Suffolk, p. 5.
[35] SuffRO, HA247/5/4, Devereux Edgar, p. 4.

not always documented. Bromley, for instance, did not follow up on the progress of Anne Wilcox's complaint at Quarter Sessions, if it ever reached that stage, and so it is impossible to determine whether Thomas Avery ultimately paid her. This inconclusive result is hardly remarkable, since there was no record of the final outcome in 95, or 54%, of female servants' wage claims and 468, or 50%, of male servants' wage claims in the Pre-Sentencing Database, as Table 2.9 indicates.[36] Sometimes the presiding magistrate simply registered that a claim had been made without indicating any action he had taken in response. More often, he would issue a summons or a warrant for the offending master to answer the worker's charge, or occasionally remand the proceedings pending further evidence, and the case would subsequently disappear from the record's pages. These disputes might have been settled in other venues, or resolved informally between the parties in the meantime, or simply dropped.

Outcome	Female Servants	Male Servants
Agreed	8 (4.5%)	56 (6%)
Abated Wages	0 (0%)	1 (0.1%)
Adjourned	2 (1%)	30 (3%)
Discharged (with or without abated wages)	2 (1%)	1 (0.1%)
Case Dismissed	6 (3%)	46 (5%)
Case Dropped	0 (0%)	2 (0.2%)
Fine/Financial Penalty	2 (1%)	7 (1%)
Employer Imprisoned	1 (0.5%)	0 (0%)
Servant Imprisoned	0 (0%)	1 (0.1%)
Letter Written to Employer	3 (2%)	9 (1%)
Returned to Work (with or without abated wages)	7 (4%)	4 (0.4%)
Summons/ Warrant Issued	77 (44%)	366 (39%)
Wages Paid in Whole or Part	52 (29%)	346 (37%)
Unclear	2 (1%)	1 (0.1%)
Other	1 (0.5%)	1 (0.1%)
Not Recorded	14 (8%)	71 (8%)
Total	**177**	**942**

Table 2.9 – Outcomes of Male and Female Servants' Wage Complaints in Pre-Sentencing Database

[36] I have counted the categories 'Adjourned,' 'Summons/Warrant Issued,' 'Unclear,' and 'Not Recorded' as instances of cases with inconclusive outcomes.

Still, the outcomes that were recorded are suggestive of how successful workers generally were in recovering their wages. The most common result was that servants of both sexes received at least a portion of their pay. However, male workers were somewhat more successful than their female counterparts. They were awarded full or partial wages in 346 cases, or 73% of those with known results, while women received at least part of their pay in 52 cases, or 63% of their claims with documented outcomes. Moreover, male servants were also slightly more likely than female servants to be granted the entirety of their wages with no abatements, receiving the full sum requested in 274, or 79%, of the cases in which wages were awarded, compared to 39, or 75%, of female servants' cases.

In a tiny number of cases in the dissertation's sources – just four, representing less than 1% of all wage claims in both databases – masters were actually imprisoned for neglecting to pay their servants. Although magistrates were empowered to levy any sums owing by the distress and sale of employers' goods and chattels in the event that they refused to comply with orders for wage payment, the justices could not incarcerate these employers in default of distress.[37] This restriction was confirmed by the high court as late as 1834. In May of that year – two months before the commencement of the set of Cheltenham petty sessions records used in this dissertation – R. B. Cooper, Esquire and two other JPs sitting for that town heard the complaint of Aaron Willicombe that Charles Wiles refused to pay him £2 2s 8d for work as a carpenter. The three magistrates determined that the wages were indeed due and ordered Wiles to pay. He claimed that he could not and that he did not own sufficient possessions upon which to raise the amount by distress. Therefore, Cooper and the others committed him to Northleach for two

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[37] Charles Manley Smith, *A Treatise on the Law of Master and Servant, Including Therein Masters and Workmen in Every Description of Trade and Occupation* (London: S. Sweet, 1852), 235 n. l; Hay, "England," 67 n. 29.

months under 5 Geo. 4, c. 18 (1824), an "Act for the more Effectual Recovery of Penalties before Justices and Magistrates on Conviction of Offenders." Wiles remained in prison for eight days. He was then discharged upon paying Willicombe's wages. The following month he brought an action for trespass and false imprisonment against Cooper and the other JPs who had incarcerated him. The high court judges, led by Chief Justice Denman, decided in Wiles' favour, ruling that 5 Geo. 4 c.18 (1824) did not grant magistrates the power to commit employers to bridewell for failure to pay their servants' wages.[38] It would be another decade before Parliament reversed this doctrine. In 1844, it passed a statute – 7 & 8 Vict. c.112 – permitting the incarceration of ship masters for refusing to pay seamen. Four years later, they enacted another statute, 11 & 12 Vict. c. 43 s 22 (1848), allowing the commitment of any master in default of distress.[39]

Given that justices did not have the legal authority to send defaulting employers to the house of correction until the last years of the period covered by this dissertation, it is unsurprising that so few wage claims in my sources – just four in total – ended with the master's imprisonment. Three of these cases are found in the Post-Sentencing Database and date from the 1850s, after the passage of the 1848 statute. All three involved male employers in Gloucestershire, committed for non-payment of sums ranging between £2 and £3. The collier Elijah Meek was sentenced to 14 days, while Richard Jones and Richard Fryer were incarcerated for a calendar month each with hard labour.[40] Jones wound up paying the wages due and being discharged after a week in the bridewell.

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[38] *Wiles v. Cooper* (1834), 3 Ad. & E. 524, 111 Eng. Rep. 513.
[39] Hay, "England," 67 n. 29.
[40] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoners 875, 1065, and 2300.

As the cases of these three men clearly indicate, the 1848 law, while ostensibly punishing masters' breaches of contract and providing further remedies for servants, also in practice served the purpose of disciplining and subordinating the working classes. The only masters in danger of ending up in the house of correction were those without adequate property to cover outstanding wages in case of a distress warrant. The three Gloucestershire employers were, not coincidentally, men of relatively humble status – workers themselves, who had contracted with other workers and then obviously reneged on the agreements. Elijah Meek had been employed in the coalmines over the past eight months, alternately by one Mr. Gould and by the collier directly under him. It was normal practice in many coalmining districts for management to hire only the principal operatives, who were then left in charge of recruiting and supervising workers. They would have to share their wages with these labourers, an arrangement that explains why many coalminers hired their own family members – or, as Meek apparently did, simply refused to pay their helpers.[41] Jones was described as a labourer in the Forest of Dean, who for the past 22 years had been doing unspecified work for crown agent Mr. Longham, while Fryer was listed as a miner who had spent the week previous to his conviction "making some roads" for Mr. John Andrews. It is worth asking whether any of these men would have found themselves in prison had they been higher status members of their community, even if 'embarrassed' circumstances had prevented them from raising the sums owed in a timely fashion. It is not unlikely that the committing magistrates felt less compunction about incarcerating men who could just as easily have been on the servant side of a master and servant dispute.

The only other wage complaint to end with an employer's imprisonment comes from the Pre-Sentencing Database and actually predates the 1848 statute by more than a century. James

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[41] Humphries, "Protective Legislation," 105.

Brockman finally ran out of patience with a man named William Gilbert, who steadfastly refused to pay his servant Mary Netherwell a year's worth of wages or give sufficient reason for withholding them. Over the space of six months, Brockman issued two warrants against Gilbert and interrogated him in person, all to no avail. At last, he made a mittimus to send the stubborn defendant to bridewell.[42] Perhaps Brockman was unaware that masters could not be incarcerated for their refusal to pay wages. He probably felt that he had few other options in the face of Gilbert's intransigence, with which he was all too familiar.

It seems that Gilbert was an incorrigible and inveterate offender. Twenty-five days before Mary Netherwell complained to Brockman for the second time, another servant of Gilbert's, William Honeyman, also charged the man with holding back his year's wages.[43] James's father William Brockman had even encountered Gilbert four years previously, near the end of his own magisterial term, when Gilbert's servant John Long accused him before William of withholding 30s wages and knocking him down with a pitchfork.[44] Nor was Gilbert reformed by his stint in the house of correction on James's orders. Four years after Gilbert's imprisonment, his servant William Carleton brought him back before James Brockman for withholding harvest pay.[45] His final appearance in the Brockman records came a little over a year after that incident, the only time he was the plaintiff rather than the defendant in a case. He got a warrant against his servant

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[42] BL, MSS Add. 42599, William Brockman, James Brockman, Ralph Drake Brockman, April 15, 1726; September 30, 1726; October 4, 1726, p. 37.
[43] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, September 5, 1726, p. 37.
[44] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, June 7, 1722, p. 11.
[45] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, March 11, 1732, p. 45.

William Fisher for neglecting his work and abusing him very much (which, given Gilbert's track record, was probably amply deserved).[46]

Clearly, William Gilbert was a difficult master. While all but one of his employment disputes were with male workers, it is interesting that he was imprisoned in the one case involving a female servant. It cannot be argued that he refused to pay Mary Netherwell due to any gender bias, when he also withheld wages from her male counterparts. Yet after James Brockman issued warrants in the cases involving men, Gilbert must have complied, for it was only Mary who had to bring multiple complaints. Perhaps Gilbert was more intractable in his refusal to pay her because she was a woman. Alternatively, it is possible that she was more persistent and determined than Gilbert's male servants. Perhaps Gilbert did not obey James Brockman's orders in those instances, either, but it was only Mary Netherwell of all his workers who kept bringing grievances. Or perhaps his male workers' complaints were settled at petty sessions, while Mary's was not. In any case, she did not take her grievance to another justice. She must have had some faith that James Brockman would be able to resolve the situation for her. He certainly did take action on her behalf, even if it does not seem to have made any profound impression on her master.

Of course, wage claims were not always successful for workers of either sex. Sometimes servants seeking payment were ordered to return to their service instead, an outcome that disproportionately affected women. Justices sent female servants back to their employers in 7 instances, accounting for 9% of wage claims with known resolutions, and male servants in just 4, representing just 0.8% of their documented outcomes. Occasionally, workers even had their wages abated for their trouble. Shropshire magistrate Thomas Parker docked Elizabeth Griffiths

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[46] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, July 11, 1732, p. 47.

five days' pay for absenting herself when she approached him about her wages and ordered her to go back. It seems that her master, Samuel Jackson, had not allowed her a sufficient quantity of "bread and common vegetables," though she admitted that he provided her with "plenty of good butcher's meat." Jackson wound up accepting Griffiths' six-week notice, so her return to an unsatisfactory situation was brief, at least.[47] Elizabeth Thomas, on the other hand, another applicant to Thomas Parker for wages, was ordered unceremoniously back to her mistress Esther Fell, with 10s 6d deducted from her pay to cover the expenses of the proceeding and the time she had been away.[48] In another instance, Parker had intended that a male servant making a wage complaint should also return to his master with abated earnings. Apparently Thomas Jake had absented himself for three weeks "without sufficient reason," and Thomas Parker directed him to go back to his employer, Mr. Bentley, and serve out the remainder of his year with his pay deducted accordingly. However, Jake and Bentley reached their own agreement whereby the servant was discharged in exchange for the master giving the balance of his wages owing to the poor instead.[49] These cases of Parker's were clearly atypical wage complaints. It seems that the servants in question – Griffiths, Thomas, and Jake – had all taken it upon themselves to end their contracts early for various reasons, and came to Parker in the hope that he would award them their outstanding wages. Their claims were obviously complicated by the fact that they had misbehaved in the employment relationship themselves by absconding without permission.

Yet workers were sometimes unsuccessful in more straightforward wage claims as well. The presiding magistrate dismissed the requests of female and male servants outright in 6 cases and 46 cases respectively, accounting for 3% and 5% of their wage claims. Furthermore, one

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[47] SA 1060/168, Justice Book of Thomas N. Parker Containing Memoranda of Cases Heard Before Him and Recognizances Taken Before Him, July 20, 1808.
[48] SA 1060/168 Thomas Parker, November 3, 1810.
[49] SA 1060/168 Thomas Parker, July 18, 1807.

unfortunate man even found himself in the house of correction as a result of bringing his grievance to summary court. Kentish labourer George Overy complained at the petty sessions for the Lathe of Scray that the farmer Thomas Coveney refused to pay him for a week of hoeing beans.[50] At first, the magistrates present – Norton Knatchbull and Francis Bradley – ordered Coveney to pay a portion of Overy's wages. The proceedings took an unpleasant turn for Overy when Coveney counter-charged that the man had cut up and ruined the majority of the beans he had been engaged to hoe, and even produced the pulverized legumes as evidence. Overy was thereupon committed for one calendar month to bridewell.[51]

Being Turned Away Before the End of the Term of Service

Nevertheless, workers – particularly men – were successful more often than not in making wage claims. The same pattern holds true for the next most common servants' grievance, besides allegations of assault, which will be discussed at length in Chapter Four. After unpaid wages and assault, workers complained most frequently about their employers turning them away before the completion of their terms of service. As treatises on labour law pointed out, masters had a duty to retain their servants during the whole period of the contract. Dismissing a worker before the expiration of that time without reasonable cause was grounds for an action for wrongful dismissal. The right of a servant to pursue this action was "utterly irrespective" of whether he or she had been paid up to the moment of the discharge, because the compensation sought was not for work already performed but for the injury sustained "in not being allowed to

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[50] This case took place well after the official 1747 expansion of wage recovery provisions to workers other than just servants in husbandry hired by the year.
[51] KHLC, PS/US/ Sd/1, Lathe of Scray Depositions Register, July 19, 1832.

serve and earn the wages agreed upon." The plaintiff could also recover any outstanding pay on a "count for wages, which may be added to the count for wrongful dismissal."[52]

Complaints about being turned away by their masters accounted for proportionately twice as many female servants' grievances as male servants', though the latter were more likely to claim unpaid wages as well. Women workers brought 58 cases of wrongful dismissal, representing 18% of their total complaints, while men brought 111, making up just 9% of their charges. Male servants also maintained actions for wages in 75 of these cases, or 68% of them, while female servants only did so in 23, or 40%, of theirs. This finding confirms the evidence already presented that wage claims made up a larger proportion of the grievances of male than of female workers.

Male servants were also slightly more likely than female servants to be successful in their complaints about wrongful dismissal. As with wage claims, the final outcome was unknown in a large share of these grievances. The case disappeared from the records after the presiding justice issued a summons or warrant, or otherwise ended inconclusively, in 30, or 52% of women workers' complaints of being turned away, and 54, or 49%, of men's. However, in those cases with documented resolutions, male servants were awarded all or part of their wages in 27, or 47% of them, compared to 11, or 39%, for female servants. Men returned to their service in a further 8 cases, or 14% of proceedings with known outcomes, while women returned in 2 cases, or 7% of cases with recorded results.

Moreover, women workers were proportionately twice as likely as men to have their complaints dismissed by the magistrate. Male and female servants alike each had five grievances over wrongful discharge dismissed outright by the presiding justices, representing 9% and 18%

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[52] Smith, *Treatise on the Law* (1852), 89-92.

respectively of their complaints with known outcomes. One unlucky woman, Anne Willis, had her contract dissolved and her wages abated when she complained to the Reverend Henry Gorges Dobyns Yate that her master Mr. George Hodges had discharged her without consent and withheld her pay. Her mistress appeared in answer to her charge against Hodges, and claimed that Willis had been absent without leave. Yate was obviously more convinced by the mistress's version of events than Willis's.[53]

Other Complaints

The remaining cases brought by servants consisted for the most part of a range of complaints about the conditions of their work. Meals were at the heart of many of these grievances. For instance, the apprentice Job Cowley complained at the Stony Stratford petty sessions that his master William Clarke had not given him adequate meat and drink.[54] The "poor child apprentice" Mary Maycock protested to Northamptonshire magistrate Thomas Thornton that her master and mistress did not allow her enough food, whereby she was forced to steal.[55] These apprentices might have been the victims of cruel and negligent masters. Joan Lane notes that pauper apprentices, like Mary Maycock, were often compulsorily allocated and unwanted. Wealthier parishioners paid fines rather than take on these children and the masters to whom they were indentured could be resentful, exploitative, and harsh. Rather than deliberately cruel, Cowley's and Maycock's masters might also have simply been too impoverished themselves to adequately provide for their apprentices. Lane reports that the second most common reason for

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[53] Herefordshire Archives and Record Centre (HARC), BB88/1, Magistrate's Examination Book of Rev. Henry Gorges Dobyns Yate, p. 54.
[54] CBS, PS/SS/M/1, Minute Books of Stony Stratford Petty Sessions, January 23, 1829.
[55] Northamptonshire Record Office (NRO), Th 1679, Notebook and Record of Depositions of Witnesses of Thomas Thornton II as Justice of the Peace, 1700-1718.

indentures to be cancelled at eighteenth-century Canterbury Quarter Sessions, for instance, was the poverty of masters who could not afford to feed and clothe their apprentices.[56]

Failure by a master to provide sufficient food to a "servant of tender years" was accounted an indictable misdemeanour – though in Cowley's case, the magistrates dismissed the grievance after hearing it fully, as the clerk underlined in the record. The high court judges affirmed the criminal liability of employers who neglected to supply 'infants' with enough food in *R v. Friend* (1802). This was the case of two apprentices, thirteen- or fourteen-year old Sarah Quill and twelve-year-old Elizabeth Good, who had "almost starved to death" because their master and mistress, John and Anne Friend, did not provide them with "sufficient meat drink, victuals …and other necessaries." Only Justice Chambre thought that the Friends' offence was not indictable, "being founded wholly on contract."[57]

In the case of adult servants, Chambre's view prevailed throughout our period. Until the mid-nineteenth century, it was considered a breach of contract when employers failed to supply adequate food to workers who were not "of tender years" – such as when the Hampshire yeoman Thomas Cook neglected to give "necessary maintenance and sustenance" to his servant in husbandry David Burgess.[58] In 1851, however, the offence was criminalized under the statute 14 &15 Vict. c. 11, which Parliament passed in the wake of a particularly scandalous instance of abuse involving a London couple who starved their servant Jane Wilbred, among other horrific acts of cruelty.[59]

Not all workers complaining about the food provided by their employers were aggrieved about the lack of it, though. Others objected to the quality of meals and drink on offer. For

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[56] Joan Lane, *Apprenticeship in England, 1600-1914* (London, UCL Press: 1996), 188, 198.
[57] *R v. Friend* (1802), Russ. & Ry. 20, 168 Eng. Rep. 662.
[58] HALS, 6M73/XP59, Droxford Petty Sessions Records, March 19, 1829.
[59] Smith, *Treatise on the Law* (1852), 116-117. This case is discussed at greater length in Chapter Four.

instance, Joseph Cleaver accused his master John Cowley before Northamptonshire magistrate Thomas Ward of serving him "poor beer."[60] Similarly, three servants in Kent protested to Montague Pennington and his colleague Mr. Backhouse, sitting in petty sessions, that their employer Mr. Dilnot had given them beer unfit to drink, as well as inadequately boiled pork.[61] Pennington also heard the complaint of a different set of three servants that they had been provided with "bad and unwholesome bread to eat" by their master, John Baker Sladden of Ripple Court, a magistrate for the county who appeared frequently in employment disputes in the pages of Pennington's notebook.[62] In response to a letter sent by Pennington concerning this grievance, Mr. Sladden answered that it was "an accidental circumstance and should be mended." However, this result seems not to have satisfied the waggoner William Allen and his mate Richard Terry, two of the three original plaintiffs, because they proceeded to parade through the town of Walmer with "very insulting behaviour" and a loaf of bread trussed up with a ribbon and some unspecified possession of Sladden's. Their master complained about this affront to Pennington, and agreed to forgive Allen and Terry on the condition that they publish and pay for an apology in the newspaper the *King's Gazette*.[63]

Workers' grievances centred not just on food, but also on the amount of work expected of them, or lack thereof. Oxfordshire apprentice Philip Lyne complained that his master Philip Hawks was not teaching him his trade.[64] Nor was Lyne the only apprentice to make such an accusation. James Varney of Buckinghamshire summoned his master John Thompson "for not

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[60] WCRO, CR162/688, Memorandum Book of Sir Thomas Ward, JP, December 26, 1769.
[61] KHLC, U2639/O1, Montagu Pennington, July 22, 1822, p. 155.
[62] Sir Bernard Burke, "Sladen of Hartsbourne," *A Genealogical and Heraldic History of the Landed Gentry of Great Britain & Ireland,* 6th ed., Vol. 2 (London: Harrison, Pall Mall, 1882), 1469.
[63] KHLC, U2639/O1, Montagu Pennington, June 23rd, 1813, p. 68.
[64] OHC, PS7/A1/1, City and Borough of Oxford Police Court Minute Book, August 24, 1841.

teaching him his business of blacksmith."[65] In other instances, the workload was overwhelming rather than insufficient. Issabba Sharp left her service with William Raisins after five days and came to Sir Gervase Clifton to complain that she was supposed to have had a helper but there was nobody except a wet nurse who did not offer to assist her, and the place was "too hard for her by herself."[66] Seventeen-year-old Ann Rogers of Kent told Montague Pennington that her master Mr. Clerk had mistreated her by forcing her to draw water beyond her strength and clean his shoes. She also objected to being "ordered about by the family." Pennington told her that she must do everything she was asked that did not injure her health, then advised her to give Clerk notice of quitting at the quarter. Rogers returned two days later with her mother, to whom she had gone without leave from her master, with further complaints of not having enough time to eat her victuals and having been shaken out of her chair by Clerk. After telling her to go back to her master's house and beg his pardon for having absconded without permission, Pennington promised to send for the man. He came the next day to report that Rogers had run away and taken her clothes. He denied any ill usage, but declared that he was willing for her to leave. Pennington asked him to pay her wages up until Christmas, though she had forfeited them by running off. Clerk agreed, and Pennington sent the girl's mother to fetch them from him.[67]

As was true of the other categories of grievances brought by servants, many of their complaints about the conditions of work did not have conclusive outcomes. Twenty, or 38%, of the 53 proceedings initiated by male servants, and 3 out of the 4 begun by female servants disappeared with the issuing of a summons, or warrant, or with no result recorded at all. Ann Rogers' litany of grievances was the solitary case brought by a woman worker with a known

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[65] CBS, PS/AY/M/1, Aylesbury Petty Sessions Proceedings, December 6, 1800.
[66] NA, M8051, Sir Gervase Clifton, p. 163.
[67] KHLC, U2639/O1, Montagu Pennington, February 13, 1810, p. 10.

outcome, and as we have seen, it ended well for her, since she was paid her wages and discharged from an unsatisfactory situation. Technically, then, in the matter of miscellaneous complaints, female servants were more successful plaintiffs than their male counterparts. However, they also made these grievances in such small numbers that it is difficult to generalize from them. The most frequent known outcome of male servants' complaints was for them to reach an agreement with their masters, which they did in 11, or 21%, of their cases. Yet, they also had their charges dismissed in 7, or 13%, of cases, including that of Job Cowley. When Stephen Fagg complained to Montague Pennington about his employer Mr. Sladden – the same man who had given unwholesome bread to his waggoner and others – Pennington dismissed the grievance as "idle and frivolous" and noted that there seemed to be a "combination of [Sladden's] servants against their master."[68] Overall, it appears that men were not as successful in grieving the conditions of their employment, as they were when it came to demanding unpaid wages or redress for wrongful dismissal.

On the whole, though, workers tended to succeed when they were complainants in employment disputes. Male servants especially were more likely to receive satisfaction when they brought their grievances to magistrates. They had a slightly higher chance of being awarded their full wage demand, rather than just part of it, when they protested about not being paid. It is not that female servants were not successful plaintiffs, just that male servants were somewhat more so. This is probably due to the fact that male plaintiffs were proportionately more likely than their female counterparts to sue for wages. While this was the most common complaint of servants of both sexes, it accounted for a larger share of male workers' grievances. Men were also more likely to demand wages in addition to remedies for wrongful dismissals. Magistrates

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[68] KHLC, U2639/O1, Montagu Pennington, July 13, 1812, p. 51; January 27, 1812, p. 45.

probably had the most sympathy for wage complaints of all the grievances brought by servants, and since male workers initiated more, both relatively and absolutely, they tended in the aggregate to be the most successful.

Masters' Complaints

In October 1712, Ipswich magistrate Devereux Edgar committed the miller's apprentice Henry Rush to the house of correction for repeatedly running away from his master, Spencer Goodall. Edgar specified that the lad should be kept to hard labour and "wel whipt," for he was a habitual offender, as the justice related at some length. He was clearly fascinated by Rush's "remarkable Story" and thought "it not wholly improper to incert [a] short account of this Boy" in his notebook, which he highlighted with a marginal manicule. Rush was "but ELEVEN years old" when Edgar first committed him for absconding from his master. Though the house of correction was "new built & very strong," the boy, "clogd…with great Chains six times," nevertheless somehow managed to rip the doors off their riveted hinges, break the iron bars of the windows, and flee.

Edgar did not chronicle the consequences of this staggering escape, but noted that he next encountered Rush when the lad was twelve years old, "very little of groth & look lean & starved in appearance." Once again, he had run off from his master. He claimed that for six weeks he had been "as good a servant as any man had," and his master agreed. Yet when his conjurer uncle recovered from an illness and went "abroad," the boy's "head was full of fancies," presumably of following in the magician's footsteps, and he declared, "[he] must goe from [his] master & [he] could not stay wth him." Further, he claimed that his mother "Eggd [him] (as he called it)…a Way." Edgar sent for the mother and the boy charged her with encouraging him to absent

himself, but she "very fairly acquitting herselfe," Edgar committed Rush to the house of correction for the night.

Throughout these proceedings, the boy "behaved himselfe… in Action & speech like a Man." In the presence of his mother and master, he was "severely whip't" and then shackled to his bedside in the bridewell. The next day, fitted with a chain and clog weighing about 40 pounds and a "Case hardened horse lock," he did some spinning. He remained in his fetters all of the evening. Around midnight, however, he broke his restraints. Edgar marvelled that the rent lock "lookt like wyer twisted assunder." It was "wrung apeeces…without hurting his Legg [which] all mankind must judge was likely, in the bare attempt to have smash't all the bones." Later, Rush would explain that he removed the lock "by force of a stick, [which] was nothing but the legg of his Spinning Wheele." Having extracted himself to this degree, the ingenious escape artist once more ripped the hinges off his door and "broak the Barrs of the Windows." He fled the premises by propping a "Great heavy door" against the outer wall and scurrying over it. The keeper of the bridewell and his family apparently never detected the "least Noise" during Rush's breakout, but the "neighbourhood" claimed to have heard "fearfull and hideous Noizes of shreeking &c." Three or four days later, the lad was taken within a few miles of the house of correction, still "fettered to a great degree." He was brought back, but "beyond all humane understanding," as Edgar concluded in wonderment, had "since div'se times broake out" again.[69]

This case is fascinating in and of itself, as Edgar clearly felt. It is difficult to imagine how an under-sized pre-teen could have carried out these daring escapes unaided. The keeper's insistence that he heard nothing when neighbours in the vicinity remembered a cacophony is odd. Perhaps he helped Rush get away, though Edgar did not seem to suspect him of complicity.

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[69] SuffRO, HA247/5/4, Devereux Edgar, 341-342.

More likely he was telling the truth – he could have been sound asleep – or too embarrassed to admit that he had heard a noise but had not bothered to investigate it. Edgar did note that the boy's uncle was a conjurer, and Rush had run off to follow him on his travels. It is not improbable – it might even be likely – that the uncle had taught the lad some tricks of his trade, which Rush was able to put to use in making his escapes. In any event, young Henry was remarkably resourceful and intrepid.

It is interesting that Edgar characterized Rush as behaving "in Action & speech like a Man." The magistrate was obviously drawing a sharp distinction between the apprentice's mature conduct and his youth and diminutive size. Yet the emphasis on Rush's manly comportment also suggests a contrast between supposedly feminine and masculine qualities. Women and children were often equated in the contemporary cultural imagination. Conservative social reformer Hannah More scoffed in her *Strictures on the Modern System of Female Education* that "*the rights of women*," which she felt had been "opposed, with more presumption than prudence," to the rights of man, would be succeeded in "the next stage of that irradiation which our enlighteners are pouring in upon us…[by] grave descants on the *rights of children*."[70] The more radical Mary Wollstonecraft begged (facetious) leave in *A Vindication of the Rights of Woman* to treat the members of her sex "like rational creatures, instead of flattering their *fascinating graces*, and viewing them as if they were in a state of perpetual childhood" the way so many elements in society insisted on doing.[71] Campaigners for factory reform in the nineteenth century would seek to limit the working hours of both "'weak women and little

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[70] Hannah More, *Strictures on the Modern System of Female Education: With a View of the Principles and Conduct Prevalent Among Women of Rank and Fortune* Vol. I (Salem, Mass.: Samuel West, 1809), 78.
[71] Mary Wollstonecraft, *A Vindication of the Rights of Women* (New York: Cosimo, Inc., 2008; orig. 1792), 11.

children.'"[72] The assumption underlying this equation of the feminine and the infantile – that women and children alike were feebler, less intelligent, and less logical than men, who were therefore the natural leaders of both – did not go unchallenged, but it was part of the zeitgeist of early modern and industrializing England. Edgar would certainly have been aware of the connection between the female and the juvenile.

In the Ipswich house of correction, Henry Rush was set to work spinning, an occupation strongly associated with women. Valenze describes it as an "archetype of female industry in depictions of labor" and notes that "the very word 'distaff'" – the stick or spindle onto which wool or flax was wound – came to mean "the female side of the family."[73] Rush even managed to prise the lock off his leg with the spoke of his spinning wheel. The boy carried out his escape by means of a woman's instrument. Here was a child, with a decidedly unmanly physique, doing women's work and utilizing in his extraordinary flight a device practically synonymous with the female. This unlikely mastermind executed multiple breakouts, which Edgar deemed to exceed "all humane understanding." Even if it came in an unmanly package and resorted to unmanly tools, the intelligence capable of orchestrating feats that stumped other men must surely be that of a man, not a child, and especially not a frail child engaged in womanly tasks. This was the sentiment that Edgar conveyed when he insisted that Rush acted and spoke "like a Man."

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[72] Frank, "Britain," 417.
[73] Valenze, *First Industrial Woman*, 68-69.

	Female Servants	Male Servants
Assault	2 (0.6%)	14 (1%)
Animal Cruelty	0 (0%)	14 (1%)
Destruction of Property	3 (0.9%)	5 (0.4%)
Disobedient	5 (2%)	35 (3%)
Drunk	0 (0%)	20 (1.5%)
Embezzlement/Theft	58 (19%)	227 (17%)
Leaving Work Unfinished	0 (0%)	25 (2%)
Misbehaviour and Assault	4 (1.3%)	14 (1%)
Misbehaviour	16 (5%)	114 (8%)
Neglecting Work	4 (1.3%)	34 (3%)
Running Away	160 (52%)	757 (56%)
Refusing to Come Serve	36 (12%)	62 (5%)
Other	15 (5%)	17 (1.3%)
Unclear	4 (1.3%)	11 (0.8%)
Total	**307**	**1349**

Table 2.10 - Servants' Offences in Pre-Sentencing Database
The percentage in parentheses indicates the share of all the offences by workers of each sex comprised by that particular category.

	Female Servants	Male Servants
Assault	0 (0%)	3 (0.2%)
Animal Cruelty	0 (0%)	3 (0.2%)
Destruction of Property	1 (0.3%)	3 (0.2%)
Disobedient	1 (0.3%)	13 (0.7%)
Drunk	0 (0%)	1 (0.05%)
Embezzlement/Theft	31 (9%)	103 (6%)
Leaving Work Unfinished	0 (0%)	1 (0.05%)
Misbehaviour and Assault	1 (0.3%)	0 (0%)
Misbehaviour	65 (18%)	292 (17%)
Neglecting Work	18 (5%)	157 (9%)
Running Away	227 (63%)	1091(63%)
Refusing to Come Serve	11(3%)	72 (4%)
Other	3 (0.8%)	2 (0.1%)
Unclear	0 (0%)	1 (0.05%)
Total	**358**	**1742**

Table 2.11 – Servants' Offences in Post-Sentencing Database
The percentage in parentheses indicates the share of all the offences by workers of each sex comprised by that particular category.

Running Away

Although Henry Rush's case was exceptionally dramatic and gripping because of his incredible and persistent escapes, in one respect it was an absolutely typical master and servant grievance. The miller Spencer Goodale had brought his apprentice Rush before Edgar because he had run away – an exploit at which he would prove to be very adept when he proceeded to run away from the bridewell as well. Absconding, deserting, being absent without permission, running away – they might call it by a variety of terms, but the offence of leaving a service already entered upon before the end of the contracted-for term (or apprenticeship) was the most common complaint that masters had about their workers. As Table 2.10 shows, running away accounted for 160, or 52%, of the charges levelled against female servants in the Pre-Sentencing Database, and 757, or 56%, of those made against male servants. These shares were even larger in the Post-Sentencing Database, as Table 2.11 reveals. In that dataset, 63% of female and male workers alike, or 227 and 1091 respectively, had been imprisoned for absconding from service.

It was a well-established offence, dating back to the Statute of Artificers and reaffirmed – with harsher penalties – in eighteenth-century acts, for any servant to depart before the end of his or her term without a quarter's warning or "reasonable cause" allowed before a magistrate.[74] Of course, workers who ran off probably felt that they had reasonable cause to leave whether a justice had discharged their contract or not. Some had likely been enticed away by the prospect of higher wages to be had in another situation. The widow Ellen Fagge complained to William Brockman that her servant David Sheete had run off without her consent, and it became plain that he had taken up with a new master when that man accompanied him in his appearance

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[74] Burn, *Justice of the Peace*, 16th ed., Vol. 4 (1788), 135; Hay, "England," 82-83.

before the magistrate. Brockman ordered Sheete to return to his mistress and receive the wages they had formerly agreed upon.[75]

Other servants left because they were fed up with their poor working conditions or treatment. In Shropshire, for instance, Mary Rowlands ran away from her master Thomas Richards for a week because he did not provide her with "proper food."[76] In Warwickshire, Ann Miller became upset when her master, John Wood, chided her for being "an idle thing." She had come downstairs at 5:55 am when she was supposed to be up at 5 o'clock. Miller put on her shawl and bonnet and told Wood that "she was not going to stop to be jawed at from morning until night," then "said something in an impertinent manner…which [he] did not clearly hear" and went away. Miller alleged that she left because Wood had repeatedly called her an "idle devil" and kicked her, a charge he denied, claiming he had been "sitting at the fire and had neither boots nor shoes on." The magistrates of the Atherstone division court ordered Miller to return to her service, and advised Wood to deduct the expenses of the proceedings from her wages if she continued to misconduct herself but not if she behaved well.[77]

In a case which the presiding justice Devereux Edgar highlighted with another one of his marginal manicules, Thomas Rolling absconded from his master John Lylly because the man was a Dissenter of the Independent Congregation who had attempted to prevail upon him "by intreatys & threats" to attend his prayer meetings instead of Anglican services. Rolling could not be convinced, so in retaliation Lylly refused to let him go to church on Sundays, instead setting him tasks such as hedging or ditching or picking turnips to keep him busy during the hours of worship and denying him meat or drink on those days. Edgar, a staunchly High Church Tory,

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[75] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, March 3, 1724, p. 36.
[76] SA 1060/168, Thomas Parker, June 14, 1811.
[77] WCRO, QS 116/2/1/2, Atherstone Division Court Minute Books, August 4, 1846, p. 83.

was so incensed at Lylly's behaviour that he demanded sureties for him to answer these "great misdemeanours" at the next Sessions even though Lylly was technically the plaintiff in this hearing. Moreover, had Lylly not "humbled him selfe" and promised to reform his conduct and to discharge Rolling, Edgar declared that he would have "bound him to appear or Comitted him to Goal [sic]."[78]

Of course, magistrates were not always as sympathetic to runaways as Edgar was to Thomas Rolling, even if the workers in question felt that their reasons for abandoning their service were legitimate. Sometimes, like Rolling, servants who absconded were lucky enough to be discharged from the employments they obviously found untenable. This outcome was not always intended as a favour to them, however. In May 1814, Mr. Parker complained to Montague Pennington that his apprentice Walter Edwards had twice run away and otherwise behaved poorly. Pennington committed the boy to the house of correction for fourteen days and then his master took him back again. A month and a half later, Parker returned to say the lad had absented himself once more and he wanted to be rid of him. He had not brought the apprenticeship indentures with him, though, so Pennington advised him to give Edwards "a little further trial" and then come back if he remained unsatisfied. Two weeks later, Parker reappeared with indentures in hand, the boy having run away yet again, and this time Pennington and his colleague Mr. Backhouse, sitting together in petty sessions, consented to discharge the master and apprentice.[79] Perhaps Walter Edwards was as pleased as Parker for his indentures to be cancelled, but he may not have been happy to find himself back in the custody of parish guardians.

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[78] SuffRO, HA247/5/4, Devereux Edgar, 41. On Edgar's Toryism, by his own account, see pages 135-138.
[79] KHLC, U2639/O1, Montagu Pennington, May 3, 1814, p. 82; June 7, 1814, p. 84; June 29, 1814, p. 84.

Other workers were ordered to return to their service. This outcome would not seem ideal to servants who clearly wished to be gone, yet it was not necessarily a complete loss for them either. The chance to air their own grievances before a JP when explaining why they had run off could theoretically lead to some improvement in their situations. For instance, the abovementioned Mary Rowlands of Shropshire may have been sent back to her master Thomas Richards, but the justice in the case, Thomas Parker, also told Richards to "allow her proper food."[80] Still, there is no way of knowing with certainty if Richards or any other employers who were similarly admonished actually reformed their behaviour upon the return of the runaway servant.

Outcome	Female Servants	Male Servants
Agreed	17 (11%)	52 (7%)
Abated Wages	2 (1%)	28 (4%)
Acquitted	1 (0.6%)	5 (0.6%)
Adjourned	0 (0%)	4 (0.5%)
Convicted	0 (0%)	3 (0.3%)
Discharged (with or without abated wages)	9 (5%)	27 (4%)
Case Dismissed	2 (1%)	17 (2%)
Charge Dropped	0 (0%)	6 (1%)
Fine/Financial Penalty	10 (6%)	22 (3%)
House of Correction	19 (12%)	144 (19%)
Returned to Work (with or without abated wages)	29 (18%)	101 (13%)
Reprimand	0 (0%)	7 (0.9%)
Summons/Warrant Issued	61 (38%)	292 (39%)
Other	0 (0%)	8 (1%)
Unclear	0 (0%)	1 (0.01%)
Not Recorded	10 (6%)	40 (5%)
Total	**160**	**757**

Table 2.12 – Outcomes of Prosecutions in Pre-Sentencing Database Against Female and Male Servants for Running Away

[80] SA 1060/168, Thomas Parker, June 14, 1811.

In general, as an examination of the cases in the Pre-Sentencing Database demonstrates, women workers were, proportionately, slightly less likely to be treated harshly for running off than were male servants. The outcomes were inconclusive or unrecorded in 44% of hearings involving both male and female workers, or 337 and 71 of their cases respectively. Yet the remaining cases shed important light on the gendered treatment of workers who absconded. Table 2.12 shows that male servants were actually somewhat proportionately more likely than their female counterparts to have the charges against them dropped by the plaintiff or dismissed by the justice. On the other hand, female servants were proportionately more likely than male servants to come to informal agreements with their masters after the initiation of the prosecution. They did so in 17 cases, or 11% of them, while male servants did in 52 of their cases, or 7% of them. The details of these settlements were not always elaborated. For instance, the Durham magistrate Edmund Tew was prepared to commit Elizabeth Jefferson to the house of correction for running away from her master, but she "agreed" with the man and Tew superseded his mittimus.[81]

In other cases the JP or his clerk gave an indication of the terms of the arrangement. Thomas States' two absconding apprentices in Oxfordshire simply promised to behave better in future.[82] Some workers came to financial agreements. In Gloucestershire, Samuel Davis settled with his servant Robert Woodward the Younger when the defendant's father offered to pay the costs the master had incurred during Woodward's absence.[83] Rose West and Ann Tomkins of Northamptonshire escaped the bridewell by agreeing with their employer Mr. Randall Lovell to

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[81] *The Justicing Notebook (1750-64) of Edmund Tew, rector of Boldon*, ed. Gwenda Morgan and Peter Rushton, Suretees Society Publications Vol. 205 (Woodbridge: Boydell and Brewer, 2000), 68.
[82] OHC, PS7/A1/1, Oxford Police Court, August 10, 1842.
[83] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, July 16th, 1839, p.44.

pay him 7s 6d each out of their wages and to compensate a charwoman for her time while they had been away.[84]

Female servants accused of running away were proportionately more likely than male servants to be ordered to return to their places. This was the single most common sentence that runaway women workers received, accounting for 29, or 18%, of their cases, as Table 2.12 reveals. Mary Rowlands of Shropshire was therefore in good company when Thomas Parker commanded her to go back to her master. By way of comparison, male workers were ordered to return in 101, or 13%, of their hearings. Sometimes servants were fined or had their wages abated for their absences as well. In Bicester, the magistrates of petty sessions ordered that the expenses of the proceeding and the costs of hiring another person to do her work in her stead should be deducted from the wages of dairymaid Rebecca Nappin, who was also sent back to her service in Bletchingdon.[85] Five years later, these JPs abated £1 and 3 shillings from the earnings of agricultural servant George Wise, who promised in addition to behave better upon his return to his master William Tubb.[86] In these situations, men were actually fined or docked pay for their absences proportionately more often than women workers. Their wages were abated in 55, or 54%, of the cases in which they were compelled to return to their employers, while their female counterparts suffered deductions in 12, or 41%, of the proceedings in which they were ordered to return.

While women workers accused of absconding were more likely to be sent back to their service, men were more likely to be sent to the bridewell. The most common single outcome for male servants charged with running away from their masters was to be committed to the house of

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[84] WCRO, CR162/688, Thomas Ward, November 23 and 24, 1770.
[85] OHC, Trum I/2, Bicester Petty Sessions, December 2, 1842.
[86] OHC, Trum I/4, Bicester Petty Sessions, March 15, 1847.

correction. They were imprisoned in 144 of their cases, or 19% of them. Female servants, by contrast, were incarcerated in 19, or 12%, of their hearings. They only made up 11% of all workers sentenced to the bridewell for this offence. Moreover, there was a more generalized readiness among magistrates across different times and places to send male runaways for correction than there was to imprison their female counterparts. Male workers were committed to bridewell in a wide variety of the sources in the Pre-Sentencing Database – at least one man was incarcerated in 31 of 45 sources containing cases of male servants running away. On the other hand, although 30 sources contained cases of female servants running away, women were only imprisoned for this offence in 7 of them. Moreover, 15 of the 19 female servants incarcerated for absconding in the Pre-Sentencing Database, or 79% of them, came from just three sets of records: the Bicester and Devizes petty sessional notebooks, and the justicing diary of Devereux Edgar. Indeed, the man who (repeatedly) sent Henry Rush to the Ipswich bridewell also sent the most female runaways, both absolutely and proportionately. He committed workers for absconding in 15 instances, and 7 of these – or 47% of them – involved women, including the "poor girl" Mary Ross, who had previously appeared before Edgar "often" for the same offence.[87]

While it is clear that in general male runaways were treated more harshly than their female counterparts, or at least were more likely to be imprisoned, the opposite is true for one subsection of servants who absconded – textile workers. Women employed in the textile industries who ran away from their service were incarcerated more often than women engaged in other trades who committed the same offence, and also than male textile workers who absconded. This will be discussed at greater length in Chapter Five's section on textile workers,

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[87] SuffRO, HA247/5/4, Devereux Edgar, 94.

but for the moment it is worth noting that it is an interesting exception to the overall pattern of male runaways receiving more severe punishments than women.

Misbehaviour

Running away was the most common offence with which workers were charged, but it was certainly not the only one. Their masters also accused them of a range of other transgressions, including refusal to come serve as agreed, misbehaviour in their service, neglect of their work, and disobedience. These infractions all contravened the binding duties of workers: to enter the service contracted for, to obey the master's lawful commands, and to work honestly and diligently.[88] Together, as Table 2.10 showed, they made up 65, or 21%, of the charges made against female servants in the Pre-Sentencing Database, and 259, or19%, of those against male servants. In the Post-Sentencing Database, summarized in Table 2.11, these transgressions accounted for 96, or 27%, of the offences for which female servants had been imprisoned, and 534, or 31%, of male servants' crimes.

These rather generic descriptions of offences – 'disobedience,' 'misbehaviour' – hardly evoke the intriguing variety of servants' actual objectionable conduct. Sometimes perfunctory case write-ups offer no further illumination, either. For instance, at a Bicester petty sessions meeting the magistrate Viscount Chetwynd sentenced Susannah Turvey to fourteen days in the house of correction for unspecified "misbehaviour" in her service to Richard King Foster.[89] Yet other cases offer more tantalizing glimpses into the quarrels that led to prosecutions. William

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[88] Smith, *Treatise on the Law* (1852), 69.
[89] OHC, Trum I/2, Bicester Petty Sessions, July 8, 1839.

White of Park Farm complained to the justices at Tewksbury petty sessions that his servant in husbandry Thomas Townsend had refused to assist in washing sheep, for example.[90]

The JPs at the petty sessions of the Lathe of St. Augustine in Kent heard long testimonies in the complaint of farmer George Laslett against his disobedient waggoner William Sidders. Laslett had ordered him to harness the horses at 5:50 am one Friday, and Sidders had refused to do so until 6:00am. Sidders deposed that 6 "was [his] usual time and [he] never agreed to go sooner." He stood firm in the face of Laslett's threats to go to the magistrates the next day and have Sidders discharged.[91] Here was a man who resolutely believed that he should not be called upon to do anything above and beyond his customary, established duties, and would not be shaken in that conviction.

Three years later the justices of St. Augustine heard a litany of complaints made by Richard Garner, steward and manager of his mother Mary Garner's farm, against James King, a servant of all works. In January, Garner, King, and several other men had been working on a haystack. According to Garner, King was "abusive" all day. He also prevented the workers from going on with their task, used the word "bugger," "sung and whistled" in Garner's ear, and declared that they were all single men and could get their bread elsewhere. According to King, Garner shook his hand in his face and all he, King, did was laugh. Garner then bet him five shillings that he would cry next week, saying he would bring him before the magistrates, and King retorted that he "never did cry for such a thing as that." The waggoner's mate, who had witnessed the scene, added that when Garner told King he would "make [him] laugh out of the side of [his] mouth," King answered: "damned if… I won't laugh when I like. I never did ask a master when I might laugh." The justices convicted James King and discharged him with orders

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[90] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, May 28th, 1853, p. 385.
[91] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, March 15th, 1845.

to pay the costs. There is no record if this was enough to make him cry, but it is tempting to surmise that Garner lost his bet, even if he won his case.[92] If King and Sidders were typical examples, the farm servants of the Lathe of St. Augustine seem to have been a spirited, self-possessed group, protective of their time and autonomy and not easily cowed by their employers' attempts to assert authority.

Still other workers seemed less assertive of their perceived rights, and more violent and temperamental. For example, the servant in husbandry Richard Williams appeared at the Cheltenham petty sessions on the complaint of his master Walter Buckle, who claimed that in addition to neglecting his work "very much" and habitually swearing at Buckle when he spoke to him, Williams had stayed out until 10 pm the previous Saturday after throwing a hatchet at Buckle's mare and cutting her thigh badly. The magistrates committed Williams for three calendar months of hard labour in the Northleach House of Correction.[93] This was hardly the only instance of a servant treating animals cruelly, either, an offence that will be discussed at greater length in Chapter Four.

Sometimes the alleged misbehaviour of workers was sexual in nature. As we saw in Chapter One, 'immorality' was considered grounds for a servant's discharge and this 'offence' did turn up in the records. For instance, Susanna Cook complained at the Cheltenham petty sessions that her servant Mary Humming had been concealing a young man in her bed and the magistrates dismissed Humming with a reprimand.[94] In the previously mentioned case of Mr. Dilnot's three servants protesting to Montague Pennington and Mr. Backhouse about the bad beer and under-boiled pork they were served, the magistrates actually fined one of the men for

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[92] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, January 22, 1848.
[93] GA, PS/CH/M1/1, Cheltenham Petty Sessions Division (Magistrates' Court) Minutes, December 9, 1834.
[94] GA, PS/CH/M1/1, Cheltenham Petty Sessions, January 31, 1835.

"immoral conduct with the maid servant." It came out in the course of the hearing that she had been discovered under his bed in a "very improper situation." Pennington recorded that Dilnot dismissed the woman from his employment, seemingly on his own authority. This incident occurred decades after Lord Mansfield's 1777 ruling in *R. v. Inhabitants of Brampton*, discussed at length in Chapter One, that a master could discharge a servant guilty of 'moral turpitude' without recourse to a magistrate. Pennington did not order Dilnot to pay the unnamed maid the wages she was due either.[95]

Pregnancy

The most common 'immoral' offence perpetrated by servants was the one targeted in *R. v. Inhabitants of Brampton* – pregnancy. Ten, or 3%, of the female defendants in the Pre-Sentencing Database were women dismissed for being pregnant. All but one of these cases took place before 1777, lending weight to the argument presented in Chapter One that Lord Mansfield's ruling did indeed prompt many employers to begin discharging their pregnant workers without approaching a JP.

On two occasions, the pregnant women seemed to consent to their dismissals and so were not counted as defendants in the database. Jane Crouch informed William Brockman that she "desired to be released from her said service, whence she [had] ever since [discovering her condition and being delivered of the child] been absent and away."[96] Anne Robert also appeared before Brockman and was discharged "by consent" from her master Nathaniel Child.[97] However, it is worth bearing in mind that Robert's 'consent,' like that of other workers we have seen

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[95] KHLC, U2639/O1, Montagu Pennington, July 22, 1822, p. 155.
[96] BL, MSS Add. 42598, William Brockman, September 2, 1717, p. 140.
[97] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, April 13, 1723, p. 27.

allegedly agreeing to contract terminations, might well have been elicited by persistent hectoring, threats, or intimidation on the part of Child.

Most discharges in these circumstances were probably unwelcome to women faced with the prospect of supporting a baby on no income. As Bridget Hill points out, many pregnant servants attempted to conceal their conditions for as long as possible because they were afraid of being dismissed. A pregnant woman or young unwed mother who had been discharged had almost no chance of finding another place, and some were driven to take drastic measures in the face of unsupportable shame and penury.[98] In Surrey, for instance, the magistrate Richard Wyatt heard an accusation of infanticide against a woman who had originally lied about her pregnancy to her master and fellow servant, claiming that being round was her natural build.[99] This hearing was not included in my database since it was not actually an employment dispute, but it nevertheless demonstrates the immense pressure that some female servants felt themselves under to hide or justify their growing bodies, as well as the terrible lengths they might go to in order to escape the stigma and poverty of unmarried motherhood. It was "overwhelmingly lower-class women, usually serving maids" who were accused of infanticide.[100]

This is hardly surprising, since pregnancy was not only disastrous for unwed servants, it was also the predictable and not uncommon result of working conditions that brought women of

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[98] Hill, *Servants*, 48, 60-61.
[99] *Deposition Book of Richard Wyatt, JP, 1767-1776*, ed. Elizabeth Silverthorne (Guildford: Surrey Record Society, 1978), 49-50.
[100] Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (London: Routledge, 1989), 111. On infanticide, see: Marilyn Francus, "Monstrous Mothers, Monstrous Societies: Infanticide and the Rule of Law in Restoration and Eighteenth-Century England," *Eighteenth-Century Life* 21 (1997): 133-156; Laura Gowing, "Secret Births and Infanticide in Seventeenth-Century England," *Past & Present* (1997): 87-115; Jackson, *New-Born Child Murder*; Mark Jackson, *Infanticide: Historical Perspectives on Child Murder and Concealment, 1550-2000* (Farnham: Ashgate, 2002); Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981); Keith Wrightson, "Infanticide in Earlier Seventeenth-Century England," *Local Population Studies* 15 (1975), 10-22.

childbearing age into frequent contact with men.[101] Two of the women discharged for pregnancy in my sources explicitly named their fellow servants as the fathers of their babies. Susan Pilcher deposed to William Brockman that Isaac Pooley, with whom she worked for W. Ross in Eleham, "had the carnall knowledge of her Body at her said Master's house."[102] Lucy Hant swore her child to Thomas Hedgecock. They were both servants of Goodman James Baker in Saltwood.[103] Given servants' long work hours and small chance of socialization outside the master's home, it is hardly surprising that liaisons occurred between men and women employed in the same household. Proximity and the fact that most servants were young and unmarried must certainly have encouraged romances between them. As Kussmaul notes, these courtships were "normal" and many pregnancies probably resulted from promises of marriage.[104] Of course, not all of these sexual relationships were necessarily consensual. Female servants were particularly vulnerable to predatory men in their masters' homes, a vulnerability that will be discussed at greater length in Chapter Four on assault.[105]

While it was certainly true that young women could be and often were impregnated by fellow servants, they were more likely to bear the illegitimate children of their masters than their co-workers. Kussmaul has shown that in Lancashire and Essex, 24% and 52% respectively of the fathers of bastard children lived in the same residence as the mothers, and of those identified by their status in the household, half were the women's employers, not their fellow servants.[106] Bastardy examinations in the records I have examined for this dissertation support the contention that in many instances masters had indeed fathered their servants' children. Although these

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[101] McLynn, *Crime and Punishment*, 111.
[102] BL, MSS Add. 42598, William Brockman, June 25, 1717, p.139.
[103] BL, MSS Add. 42598, William Brockman, p.109.
[104] Kussmaul, *Servants*, 44; Hill, *Servants*, 56-57.
[105] Hill, *Servants*, 44-46; Oxley, *Convict Maids*, 52-53.
[106] Kussmaul, *Servants*, 44.

depositions were not included in my databases because they were not employment conflicts, they can nevertheless shed important light on master and servant relationships. While Hill observes that many masters who impregnated their maids pressured the women to conceal the child's paternity, or even to lay the blame on another man, there was still no shortage of female servants prepared to charge their employers with fathering their infants.[107]

Married men especially might be eager to hide their responsibility for their servants' pregnancies. William Hilton, a farmer from Herne in northern Kent, near Whitstable, was desperate to protect his reputation from the scandal of fathering illegitimate children – though not desperate enough to cease having extra-marital affairs with the women he employed. One of these women, Ann Giles, who had been hired as housemaid to Hilton's wife six months previously, "had connection" with Hilton in the parlour between 6 and 7 in the morning on April 1st. She told the magistrates of the Lathe of St. Augustine that she remembered the date because Hilton told her "he would not make a fool of himself." Hilton and Ann Giles had numerous other "connections" after this incident, including one time in July or August while another servant, Bethia Shillick, lay in the same bed. Bethia could hardly fail to notice this activity. In fact, she had also caught Hilton and Giles together "frequently" in the parlour and the cellar and other suspicious situations, as she testified during Ann's examination at petty sessions. When Ann's pregnancy became obvious, William offered her £10 to swear the child to another man, protesting that "he had only a few friends, and should lose them" if the truth came out. Ann refused. At the hearing, William declined to cross-examine her or to call any witnesses, "alleging that he had been interfered with by the justices." He did not elaborate on this supposed

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[107] Hill, *Servants*, 49.

interference, nor did the magistrates take his claim seriously. They ordered him to pay 2s 6d per week toward the maintenance of Ann's son.[108]

Three months later, Bethia, who must have herself been pregnant when she testified on Ann Giles' behalf, swore her own illegitimate son to William Hilton. She had been the family's cook, and the only other female servant in the household. Bethia and her master had "connection" in the passage leading down to the cellar in February, and "frequently afterwards…in various places in and about the house." Ann Giles deposed that she had seen the two of them together on several occasions, including in her own room. According to the man who served Hilton his summons in this bastardy case, William had sent his brother to Bethia's father to assure him that he would pay the same maintenance for Bethia's child as he did for Ann's. Since he had already been named publicly as the father of one servant's illegitimate child, he must no longer have cared about losing his friends by appearing in another paternity suit. Presumably they had either stood by him or abandoned him already. The magistrates at petty sessions ordered him to pay 10s for the midwife, 5s per week for three weeks, and then 2s 6d per week afterward, the same amount they had awarded to Ann.[109]

Some masters who had impregnated their servants were more receptive to honouring their responsibilities than others. At the Ludlow petty sessions in 1847, Susan Powell swore that her master William Brees Cooke was the father of her illegitimate daughter. He had given her half a crown for the midwife after she was confined, and 5s for the maintenance of the child the next day. Several other times he also gave her money to buy the baby clothes, and 5s "twice over afterwards." Cooke had instructed the midwife to "buy anything for the child that is wanting." Martha Ratcliffe, presumably a neighbour or friend, even testified that Cooke had consulted her

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[108] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, February 21, 1846.
[109] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, May 30, 1846.

as to the propriety of marrying Susan Powell. Perhaps in the intervening months he had decided against marrying his servant, or perhaps he did so eventually, but in the meantime the magistrates ordered him to pay 2s a week and the costs of the proceeding.[110]

Not every employer was as prepared as Cooke to offer financial support without coercion. When Sir William Bromley issued a warrant to apprehend the Warwickshire carpenter John Gayden for being the reputed father of his servant Sarah Alyford's unborn baby, Gayden absconded. He was taken up on a second warrant and "pretending to compound with [the] Parents of the young woman, was by them released without bringing him before any Justice of the Peace."[111] Bromley did not record the details of the agreement Gayden had reached with Sarah's mother and father, but perhaps it was similar to the bargain that the Kentish servant of all work Olive Goodwin tried unsuccessfully to drive with her master, Thomas Friend Plomley. According to her lengthy deposition at the St. Augustine petty sessions, Olive had regular "connexion" with the married Mr. Plomley, from about a month after she was hired on May Day up until a week before Michaelmas 1843. Olive "did not like to tell" Mrs. Plomley that her husband had "taken liberties" with her because she "thought it might break her peace," but she continued to have intercourse between one and four times a week with her master while her mistress was out of the house. Since the birth of her son, Olive had gone with her mother Frances to speak to Plomley about maintenance for the child. He refused to pay anything or to even look at the baby, allegedly using "bad language," pushing Mrs. Goodwin away, and declaring: "If the young one is mine you can't make me keep it." Olive threatened to go to his wife if he did not allow something for the boy, and Plomley replied brutally that "he did not care for Mrs. Plomley

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[110] SA, PS1/2/A/1/1, Ludlow Borough Petty Sessions Minute Book, April 20, 1847.
[111] WCRO, CR103, Sir William Bromley, p. 100-101.

more than [Olive].” She then warned him that if he did not give her £10 she would summon him to court. Her presence at petty sessions suggests that he was equally unmoved by this threat.[112]

Female servants were also vulnerable to exploitation by their masters’ male relatives, as the sons and brothers of women’s employers who were named in bastardy examinations attest. For instance, the Northamptonshire maid Mary Earle deposed that Samuel Herbert, brother of her master John, was the father of her illegitimate child in her examination by the magistrate Thomas Thornton.[113] Two years earlier, Mary Brees gave Thornton a detailed account of how William Smith, son of her master John Smith, “had the carnal knowledge of her body…at the hall window in his father’s house … in the evening, it being dark, while his mother and sister was a milking, and his father in the next room, the child she tended being then abed.” She did not present herself as a particularly willing participant in what must have been a rushed and risky encounter, with her master so nearby. She described to Thornton how “it was done,” noting that she “stood upright all the time” and “did not sit upon any chaire or stool…nor leaned against the wall.” William “had the carnal knowledge of her body a second time… after the same manner as the first” some weeks later, and then “never after.” This hardly sounds like a passionate consensual love affair, but rather the reluctant submission of a woman to a man who pressed his advantage as the son of her employer.[114] Alice Gray, on the other hand, the servant of shoemaker J. Marsh of Eleham, seems to have been swindled by false assurances. She was pregnant by her master’s son Abraham and testified to William Brockman that he had “promised her marriage, but instead of performing such promise to her, she is well informed he is run away.”[115] This may

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[112] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, December 21, 1844.
[113] NRO, Th 1679, Thomas Thornton, September 15, 1703.
[114] NRO, Th 1679, Thomas Thornton, December 27, 1701.
[115] BL, MSS Add. 42598, William Brockman, November 19, 1716, p. 134.

have been the same Abraham Marsh who appeared before Brockman five years later to dismiss his own servant Beryl Stephens for being pregnant.[116]

Clearly pregnancy was a very real job hazard for female servants. One case in particular, though not an employment dispute, illustrates in the extreme how dangerous it could prove to be. On September 6, 1735, the Kentish magistrate Sir Wyndham Knatchbull and his fellow justices in petty sessions spent the majority of the day taking witness depositions about the death of Ashford maltster Mr. Houghton's pregnant maidservant, who had been found drowned in her master's cistern in July. At the time, the coroner had returned a verdict of suicide, but suspicions arose in the community that Houghton had actually "made away with her," and upon application from the maid's family the magistrates had agreed to examine the matter further. One Mrs. Snoad testified that her husband had seen Houghton and his wife deep in conversation in a room adjoining the cistern between midnight and 1 am on the night of the maid's death. Mrs. Swineyard, the midwife, deposed that the girl's throat was very black under her muffler. When she laid her out, Mrs. Snoad had also observed a swelling on the girl's neck, and the next day a "settled blackness" in that area. Furthermore, the informative Mrs. Snoad delivered her opinion that nobody had slept that night in the maid's bed, though it was "much tumbled." The maid's shoes lay buckled beside the bed. She was wearing her nightcap when she was pulled from the cistern, and according to witnesses her eyes and mouth had been closed. The coroner and his jury had not perceived "any marks of violence upon the body," but admitted that their chief enquiry had been to know "how far she was gone with child" and, "not suspecting in the least at that time but that she had made away with herself, did not examine all her other parts so nicely as they might have done, if they had had any other suspicions." They did not remove her muffler, which

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[116] BL, MSS Add. 42598, William Brockman, May 23, 1721, p. 187.

would have hidden her black, swollen throat. Upon hearing all the evidence, the magistrates concluded that Houghton did not appear to be guilty, though Sir Wyndham did not keep an account of their deliberations.[117]

Of course, there is no point in challenging the verdict in a centuries' old case, especially without all the facts to hand, though it seems worth noting that some of the evidence did appear to contradict the narrative that the unnamed maid had killed herself. This does not necessarily mean that Houghton the maltster had murdered her, but it is intriguing that enough people began to suspect him for the matter to be revisited. It is certainly not outside the realm of credibility that a master who had fathered a bastard child would panic and "make away" with the mother before the baby was born and his responsibility came to light. We have seen that many employers, particularly married men, were very anxious to conceal their paternity of a servant's illegitimate child. Still, the inference must be that she died, whether by her own hand or Houghton's, because she was pregnant. If he killed her, it is not an unwarranted assumption that he had fathered her baby. If she did commit suicide, it is a tragic testament to the tremendous shame and despair that an unwed mother in her position could feel. Most female servants who found themselves pregnant did not end up dead as a result, but this case, while exceptional, drives home how high the stakes could be in these situations.

Pregnancy was a gendered employment offence in its prosecution and punishment. This may seem obvious, since male servants could hardly be dismissed for being pregnant. However, it takes two people to produce a child, and it is undeniable that unwed fathers were not treated as harshly as unwed mothers. Twice, William Brockman discharged men who had fathered bastard children, but it is unclear if this was the cause of their dismissals. In January 1717, he allowed

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[117] KHLC, U951/O4, Sir Wyndham Knatchbull, September 6, 1735, p. 26-28.

the departure of H. Coleman from his service with J. Terrall, "the former being charged with begetting a bastard child on the body of Jane Kennett…whom he married."[118] Six years later, Brockman permitted the discharge "by consent" of John Brice from the service of Henry Barton. Brice had lain out of his master's house "several nights" and gotten a widow pregnant, "whom he [had] since married."[119] The fact that both Coleman and Brice, who seemed amenable to their dismissals, had married the mothers of their children suggests that perhaps they were discharged not for being fathers of bastards but for becoming husbands. Although Burn specified that a servant marrying was not reasonable cause for dismissal because it was not a misdemeanour, his handbook was not published until after Brockman's time.[120] Moreover, William Brockman's contemporary Thomas Thornton and his son James Brockman between them discharged three men for "being married." Thornton even noted that one of these, Richard Bassett, and his master John Adkins had "agreed to part by consent."[121] It is quite possible that Coleman and Brice, like Richard Bassett, had wanted to look for new employment once they were married, and that none of these men had been discharged by way of punishment, least of all for fathering children.

One of the most unusual cases involving pregnancy in an employment relationship was that of James Graves and his mistress, the widow Mary Burton. Graves was discharged by William Brockman from his contract due to Burton's "inability to retain a …servant" and a "want of employ" for Graves. He certainly found a way to keep occupied, however, since the final reason that Brockman gave for Graves' discharge was the fact that Burton was "with child

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[118] BL, MSS Add. 42598, William Brockman, January 17, 1717, p. 136.
[119] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, June 29, 1723, p. 30.
[120] Burn, *Justice of the Peace*, 24th ed, Vol. 5 (1825), 122.
[121] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, May 6, 1732, p. 47; June 3, 1738, p. 54; NRO, Th 1679, Thomas Thornton, January 29, 1702.

by him."[122] Frustratingly, there were no more details about this situation forthcoming, but it is certainly an intriguing reversal of the usual pattern of illegitimate pregnancies in master and servant relationships. Interestingly, and unsurprisingly, it was still the woman who was punished in this case, by the loss of her servant. True, Graves was discharged, but Brockman was clear that he was dissolving the contract as a favour to the man and a rebuke to his mistress. This highlights once again how unwed mothers were treated more harshly than unwed fathers, whatever their social status.

Drunkenness

Drunkenness was another gendered employment offence. In theory, servants of either sex could commit this particular infraction, but in practice it was only men who did so – or at least, only men who were charged with it in summary courts in the sources examined here. Twenty male defendants in the Pre-Sentencing Database, or 1.5% of them, as well as a solitary male inmate in the Post-Sentencing Database, had been accused of drunkenness. As we saw in the Introduction, Mr. Sladden of Kent did claim that his servant Sophia Wanstall was "very drunk," and the housemaid Sarah Gisby confirmed that she appeared "very tipsy," but this was in the context of Sophia's complaint that Sladden was detaining her clothing. She claimed that when she tried to collect her effects Sladden kicked at her, and he countered that he had not touched her and that she was too drunk to even tie her bundle of possessions.[123] He might very well have been trying to discredit her assault allegations. Even if Sophia had been intoxicated, this was not the cause of her dispute with Sladden, as it was in the cases involving male servants who had drunk excessively.

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[122] BL, MSS Add. 42598, William Brockman, March 13, 1719, p. 157.
[123] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, May 13, 1843.

By the end of our period, the high courts were ruling that drunkenness in servants was grounds for immediate dismissal by their employers. In *Speck v. Phillips* (1839), Lord Abinger called drunkenness a "justifiable ground of discharge."[124] Five years later, in *Wise v. Wilson* (1844), the case of seventeen-year-old George Wise, a surgeon's "pupil and assistant" who came home drunk and therefore could not compound and dispense medicines, Lord Denman asserted that although a master had "a right to dismiss a servant for misconduct," he did not think that the lad's intoxication "alone" would justify the surgeon in dismissing him. However, he believed that Wise had caused "real danger" to his master's business by employing the shop-boy to mix the medicines when he could not, and so the surgeon had been justified in discharging him.[125] Advice columns for magistrates, such as the publication *The Justice of the Peace*, cited *Wise v. Wilson* as proof that the "habitual drunkenness" of servants, if it interfered with the performance of their duties, was a reasonable cause for dismissal without notice.[126]

The majority of complaints about drunkenness in the Pre-Sentencing Database date from before *Wise v. Wilson* (1844) and *Speck v. Phillips* (1839) respectively, perhaps indicating that the determinations in these cases had an impact on the way employers dealt with their drunken servants.[127] They might have been more likely to bring their grievances to a magistrate rather than discharge their workers under their own authority prior to these rulings. The earliest of these cases in my records, taking place in 1718, involved the JP William Brockman convicting his own servant, William Page, of being drunk. Brockman was also the witness in this instance. He fined

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[124] *Speck v. Phillips* (1839), 5 M. & W. 279, 151 Eng. Rep. 119.
[125] *Wise v. Wilson* (1844), 1 Car. & K. 662, 174 Eng. Rep. 981.
[126] J. Paterson, A. MacMorran, S. G. Lusington, eds, *The Justice of the Peace* Vol. LV (London: Richard Shaw Bond, 1891), 693.
[127] Eighteen, or 90%, of these complaints occurred prior to 1844, and sixteen, or 80% of them, prior to 1839.

the man 5s for the poor.[128] This would have been under the statutes 4 J. c. 5 (1606) and 21 J. c. 7 (1623), which stipulated that every person convicted of being drunk should pay 5s to the churchwardens within a week, provided it was a first offence.[129]

Fines and financial penalties were the most common outcome in cases of servants' drunkenness, occurring in11 proceedings in the Pre-Sentencing Database, or 55% of them. The Jacobean statutes also provided for the corporal punishment of offenders who did not pay their fines, as the JPs at the Cheltenham petty sessions reminded William Hinds in 1834. His master William Spooner charged him with being "so drunk as to be incapable of attending to his service," and also using "very abusive language" toward him. The presiding magistrates fined Hinds 5 shillings and noted that if he did not pay within the week he would be put in the stocks for six hours.[130]

The next most likely outcome, occurring in 4 cases, or 20% of them, was for the worker to be imprisoned. Usually those servants who wound up in the house of correction had compounded their drunkenness with other misbehaviour, or else imperilled their masters' property. Benjamin Poole, the nineteen-year-old apprentice of Shrewsbury barber Richard Lowe and the lone drunken offender in the Post-Sentencing Database, had been found guilty of "repeatedly getting drunk and neglecting his business, abusing his mistress, and absenting himself from his master's service, without his consent or lawful occasion," and was therefore imprisoned for 14 days by the justice Joseph Loxdale.[131] In Buckinghamshire, William Clarke had returned late at night "in liquor" and pulled off his coat and offered to fight his master Richard Chibnall. He was sentenced to two months' incarceration by the magistrates of the Stony

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[128] BL, MSS Add. 42598, William Brockman, March 17, 1718, p. 145.
[129] Burn, *Justice of the Peace*, 7th ed., Vol. 1, (1762), 34-35.
[130] GA, PS/CH/M1/1, Cheltenham Petty Sessions August 29, 1834.
[131] SA, QS/10/2, Calendar of prisoners, 1786-1817, No. XXX, May 1791, Prisoner 39, p. 4.

Stratford petty sessions.[132] William Baylis received a month of hard labour from the same JPs for driving his master's chaise while drunk and upsetting it.[133]

Indeed, as in Baylis's example, many cases of servants being prosecuted for drunkenness involved horses and vehicles. This is probably because unsafe driving and the incompetent handling of animals quickly called attention to a drunken state and also proved incredibly hazardous and potentially costly. Samuel Taylor the dairyman complained to Montague Pennington that William Stoles the waggoner and his mate John Laurence had gotten so drunk as to "endanger their own lives and the team." The two brazened it out in their hearing, allowing that they had done so before and offering no apologies or promises of better behaviour, so Pennington committed them to the house of correction for 14 days.[134]

The fact that servants convicted of drunkenness often worked with horses also helps to explain why no women were accused of this offence in my sources. As we will see in the following chapter as well, female servants were not typically employed driving carts or caring for draught animals on farms.[135] Therefore, when they did get drunk, they were not prone to overturning vehicles or injuring their teams – behaviour that was very likely to result in prosecution. Of course, workers did not have to maim or endanger valuable horses in order to be charged with drunkenness. The Devizes magistrates committed George Burden to the house of correction for two months because he had gotten drunk and neglected his work.[136] A female servant was theoretically just as capable as a male servant of being negligent while intoxicated.

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[132] CBS, PS/SS/M/1, Stony Stratford Petty Sessions, November 21st, 1828.
[133] CBS, PS/SS/M/1, Stony Stratford Petty Sessions, February 6th, 1829.
[134] KHLC, U2639/O1, Montagu Pennington, May 18, 1814, p. 83.
[135] Kussmaul, *Servants*, 34.
[136] Wiltshire and Swindon History Centre (WSHC), B13/100/2, Devizes County Division Justices' Minute Books, July 25, 1837.

Still, the majority of drunken servants who were prosecuted did work with horses, and they were much more likely to be men.

Conclusion

The two large databases that together form the core of this dissertation enable both a quantitative and qualitative analysis of the gendered application of master and servant law in England. This analysis shows that women workers made up about one-fifth of all servants involved in employment disputes. They were plaintiffs in these cases slightly more often than defendants, proportionately, while the reverse was true of their male counterparts. However, when we exclude the Brockmans' unique caseloads, with their atypically high shares of allegedly consensual contract dissolutions, both male and female workers were defendants proportionately more often than they were complainants. Male servants in employment disputes were still defendants proportionately more frequently than female servants, though.

Servants of both sexes were generally successful when they were plaintiffs. However, male workers were slightly more so than women workers. For instance, men making wage claims were somewhat more likely than women to be awarded the entirety of their requests, rather than a portion of them, while female servants who complained about being turned away before their terms were complete were twice as likely as their male counterparts to have their grievances dismissed by magistrates. Of all the complaints made by servants in the summary courts, claims for unpaid wages tended to succeed most often. Since male servants made these claims both relatively and absolutely more frequently than did female servants, they tended to be more successful as plaintiffs than women workers, despite being complainants proportionately less often.

Servants' success did not usually carry over to those employment disputes in which they were defendants, however. Justices were more likely to rule in favour of masters when they were the ones who initiated the proceedings. In general, female servants who stood accused of offences were treated more leniently than male servants. They were less likely than men to be imprisoned, for instance, and made up a smaller proportion of all workers sentenced to the house of correction than they did of defendants in master and servant conflicts overall. Runaway female textile workers represented a significant exception to this pattern, and they will be discussed at greater length in Chapter Five. Moreover, the relative leniency with which female defendants were generally treated in comparison to male defendants did not extend post-sentencing to those women who received the harshest punishments. Female servants committed to bridewell were actually less likely to be released early than their male counterparts, who were incarcerated more routinely but often for less perceived cause.

The range of complaints that employers made against servants was wider than that of workers' grievances, which consisted primarily of claims for unpaid wages, accusations of assault (which will be examined in Chapter Four), allegations of wrongful dismissal, and objections to the amount of food or work provided. Masters complained about an extensive variety of servants' offences, including running away, refusing to come serve after contracting to do so, leaving work unfinished, disobeying orders, destroying property, stealing and embezzling (which is the subject of the following chapter), and other kinds of 'misbehaviour.' The longer list of employers' grievances reinforces how master and servant law was biased in favour of masters. A broader swath of servants' conduct was punished with penal sanctions.

While male and female servants alike were accused of most kinds of transgressions, two infractions were markedly gendered: pregnancy and drunkenness. Of course, biologically, only

women were capable of becoming pregnant. Nevertheless, conception requires both a man and a woman. It is noteworthy that in practice, it was the mothers and not the fathers of illegitimate children who were prosecuted by their masters.[137] As we saw in Chapter One, the catalyst for dismissing pregnant servants lay as much or more in a moral opprobrium of unwed mothers as in any reduction, arising from a woman's pregnancy, in her ability to perform her duties. This stain of 'immorality' tarnished women much more than men, despite Lord Mansfield's (incorrect) assertion that men were equally guilty of a crime in fathering bastard children. Only two men who had impregnated women, both of whom went on to marry them, were dismissed from their service in the records examined here. They might actually have been discharged for becoming husbands, not fathers, and might very well have consented to their dismissals. On the other hand, 3% of female defendants in the Pre-Sentencing Database had been charged with the 'offence' of pregnancy and discharged. This was particularly unfair, since pregnancy was almost an occupational hazard of female servants, many of whom had been impregnated by their own employers.

Drunkenness, unlike pregnancy, was an offence that both male and female workers were theoretically capable of committing. Yet in the sources used for this dissertation, only men were prosecuted for it. The explanation probably lies in the fact that most servants charged with drunkenness worked with their employers' horses, and the carts and carriages they pulled. In their inebriated states, these servants had often inflicted harm on their masters' valuable animals and vehicles. This damage drew attention to and compounded the workers' drunkenness, and made legal action on the part of their employers more probable. Masters would also want to deter

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[137] Bastardy law was equally biased against mothers, who could be imprisoned up to a year in the house of correction for bearing illegitimate children who became chargeable to the parish, while reputed fathers were only served with maintenance orders. Burn, *Justice of the Peace*, 7th ed., Vol. 1(1762), 159, 172.

intoxication, and the damage that drunken men were more likely than sober men to cause, by punishing it. Female servants were not responsible for driving or caring for draught animals on farms. Thus, any bouts of drunkenness on their part were perhaps less likely to result in costly and grievous injuries. The gendered division of labour helped shape the pattern of workers' offences and the prosecutions brought against them. This is a point that will be explored at greater length in the following chapter, which looks in depth at one as yet unexamined category of crime with which servants were charged: the theft and embezzlement of their employers' property.

Chapter Three: Theft and Embezzlement

Contemporaries were alarmed by the prospect of thieving employees, as manuals on master and servant relationships and statutory enactments clearly attest. Guidebooks aimed at domestics never failed to pre-emptively exhort honesty in their readers, in between advice about waiting at table and closing doors quietly. The anonymous author of *Instructions in Household Matters*, for instance, reminded his (female) audience that "Thou shalt not steal" was one of God's ten commandments.[1] The "butler in a gentleman's family" who addressed a series of helpful "Hints" to domestic servants was even more forceful. Under the heading "BE SCRUPULOUSLY HONEST," he emphasized that a thief was a "despicable being." In the tone of a preacher thundering from the pulpit, he warned his readers that "*one* of your *little pilfering sins*, unrepented of, will sink your soul in everlasting torments," and that "God has prepared no little hell for little sinners." He then prompted them to work cheerfully.[2] Handbooks on household management addressed to the employers of servants also broached the subject of their trustworthiness. In *Domestic Duties*, Mrs. William Parkes cautioned mistresses to be on guard against the pilfering proclivities of their hired help, for whom the "temptation" to procure "by dishonest means an additional allowance of the essentials of life" may have proven "too great for them to resist."[3]

These concerns about the honesty of workers were also manifested in eighteenth- and nineteenth-century legislation. When benefit of clergy was extended irrespective of literacy in

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[1] *Instructions in household matters: or, The young girl's guide to domestic service* (London: J. W. Parker, 1855), 16.
[2] *Hints to Domestic Servants: Addressed More Particularly to Male and Female Servants, Connected with the Nobility, Gentry, and Clergy. By a Butler, in a Gentleman's Family* 2nd ed. (London: Hamilton, Adams, and Co, 1854), 82-83.
[3] William Parkes, *Domestic duties: or, Instructions to young married ladies on the management of their households, and the regulation of their conduct in the various relations and duties of married life* (New York: Harper, 1838), 111.

1706, theft by domestic servants was one of the first crimes rendered subject to capital punishment. Seven years later, 12 Ann c. 1 (1713), the Larceny from a Dwelling House Act, made theft by servants from their masters of goods valued more than 40 shillings a non-clergyable offence. Contemporaries hoped that these stiff penalties would discourage the common pilfering of "wicked servants" who stole with impunity because they had no fear of being hanged.[4] In 1822, Parliament passed 3 Geo. IV c.38, "for the further and more adequate punishment of servants convicted of robbing their masters." Enacted in response to the "frequent depredations" committed by "clerks, apprentices, and servants, to the serious detriment and loss of…masters, mistresses, or employers," this statute gave the courts discretion to transport for up to fourteen years any convicted offenders who were entitled to benefit of clergy, since it was "expedient that…[they] should be made liable to a more severe punishment than can now by law be inflicted."[5]

In a similar vein, manufacturers fretted over the embezzlement of industrial materials by outworkers, who were paid on a piece rate basis and might supplement their earnings by purloining a portion of the material delivered to them, or by producing work of a quality inferior to the agreed-upon standard. These practices were carried on extensively in the putting-out system.[6] Some takings were considered customary perquisites, such as the waste hanks of yarn kept by weavers in the textile industries. However, the line between acceptable and illegitimate appropriations was vague, contested, and shifting. Over the course of the eighteenth century,

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[4] J. M. Beattie, "The Criminality of Women in Eighteenth-Century England." *Journal of Social History* 8 (1975): 92; McLynn, *Crime and Punishment*, 91; Valenze, *First Industrial Woman*, 27.
[5] 3 Geo. IV, c.38, s.2 (1822).
[6] John Styles, "Embezzlement, Industry and the Law in England, 1500-1800," *Manufacture in Town and Country Before the Factory*, ed. Maxine Berg, Pat Hudson, Michael Sonenscher (Cambridge: Cambridge University Press, 1983), 175-178.

owners were becoming increasingly intolerant of all such practices, whether sanctioned by custom or not.[7]

Theft and embezzlement by servants were, theoretically, legally distinct transgressions, both one from the other and from master and servant offences. Nevertheless, they warrant examination here because they constitute a breakdown in the employment relationship requiring judicial intervention. Larcenies and fraudulent appropriations by workers, in the eyes of masters, represented breaches of trust and contract, subversions of the perceived and expected duty of servants to toil honestly and obediently. They were crimes born of workplace conditions as much as infractions like deserting service or ignoring an employer's lawful commands. Moreover, the boundaries between all these offences were often blurred in practice.

While the previous chapter offered a gendered analysis of specifically master and servant offences, this chapter undertakes a similar analysis of servants' illicit appropriations. It argues that the inter-connections and ambiguities of embezzlement, larceny, and employment offences encourage a more comprehensive view of servants' alleged misdeeds and the responses to them. Although these crimes theoretically occupied distinct legal categories, in reality they existed together in a continuum of transgressive behaviour contested and negotiated by workers, masters, and magistrates. The chapter also sheds light on the gendered dimension of servants' thefts and embezzlements and on the law's intervention in these cases. It reveals that the sexual division of labour influenced the items that workers chose to purloin and the methods by which they acquired them. Furthermore, it demonstrates that gender also played a role in the treatment of thieving servants by magistrates. Male servants were more likely to be imprisoned than their female counterparts, although workers of both sexes were incarcerated more often for stealing

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[7] Richard J. Soderlund, *Law, Crime and Labor in the Worsted Industry of the West Riding of Yorkshire, 1750-1850* (PhD Dissertation, University of Maryland College Park, 1992),147-155.

than for other employment offences. It is clear that while male and female servants alike pilfered and embezzled from their masters, their targets, tactics, and eventual punishments differed due to gender.

Interconnections of Theft and Master and Servant Offences

Workers' thefts differed from other offences they might commit against their masters, such as disobeying orders or absconding before the expiration of their term, because technically, as guidebooks made clear to JPs, both grand and petty larceny were felonies and could not be tried summarily.[8] The Marian bail statutes required that justices send all cases of felony on to Quarter Sessions or Assizes.[9] Yet, as Drew Gray and John Beattie have demonstrated in their studies of the operation of summary justice in eighteenth-century London, metropolitan magistrates were in fact dealing summarily with thefts in spite of the law's stipulations.[10] Beattie contends that this habit actually became a "distinguishing characteristic of criminal justice administration in the capital," in response to an increase in property offences and a lack of appropriate penal responses to petty larceny.[11] Gray observes that London JPs clearly believed they had the authority to filter these complaints out at an early stage of proceedings to keep the higher courts free for weightier crimes.[12]

My data shows that the summary settlement of larcenies was not restricted to the capital. County magistrates were also willing to by-pass formal prosecution in favour of a speedier resolution. Sitting alone at a meeting of the Lathe of Scray petty sessions in northern Kent, for

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[8] Burn, *Justice of the Peace*, 7th ed., Vol. 2 (1762), 351.
[9] Shoemaker, *Prosecution*, 23; Beattie, *Crime and the Courts*, 271-281.
[10] Drew Gray, *Crime, Prosecution*, 67-68; Beattie, *Policing*, 21-26.
[11] Beattie, *Policing*, 25.
[12] Gray, *Crime, Prosecution*, 75.

example, the army officer John Hobday Lade committed cook and servant in husbandry Sarah Stephens to the house of correction for fourteen days, despite her protestations of innocence, after her mistress Mary Hills accused her of stealing a pair of gloves and a silk handkerchief.[13]

When it came to thefts perpetrated by servants, magistrates may not have been motivated in acting summarily solely by a desire to reserve Quarter Sessions and Assizes for more serious crimes, however. Cases of workers' larcenies might very well have seemed to blend inseparably in with the sorts of master and servant disputes over which justices did exercise summary jurisdiction. The two offences could be imbricated in the same complaint. In a hearing before the Reverend Henry Gorges Dobyns Yate, an early nineteenth-century magistrate and rector of Bromesberrow in northern Gloucestershire, the Herefordshire brickmaker John Low the Younger accused his hired labourer John Parker "of several misdemeanours in his said service by breach of contract & by feloniously stealing a…wooden bottle value at 20d the property of the complainant."[14] In this instance, John Low seems to have charged Parker with the theft as a means of extracting compensation for the breach of contract. After Yate granted a warrant in response to Low's initial grievance, Parker made amends for his breach and "the other complaints were withdrawn." Low's example suggests that some employers were willing to use the threat of felony proceedings to coerce obedience from their workers, and that some magistrates, like Yate, were prepared to connive at this practice.

In other instances involving alleged thefts, aggravated masters seemed to treat hearings before JPs as opportunities to vent their manifold grievances about the misbehaviour of their servants. Montague Pennington heard the complaint of the farmer Leonard Woodward that his waggoner's mate, Daniel Castle, had stolen corn for his horses and neglected them, as well as

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[13] KHLC, PS/US/Sd/1, Lathe of Scray, June 14, 1826.
[14] HARC, BB88/1, Henry Yate, p. 107.

run away from his service once. As was his usual practice in cases of grain theft and workers' misconduct, Pennington fined Castle by an abatement of wages. He noted that he would have committed the man, but Castle was "much frightened and cried bitterly." At Pennington's request, Woodward remitted £2 of the £3 fine when it came time to pay the waggoner's mate at Michaelmas.[15]

Besides showcasing Pennington's relative lenience in his dealings with workers, and his readiness to be swayed by their contrition and fear, this case demonstrates that theft might simply be one of a number of a servant's perceived transgressions, inextricably bound up in the master's general dissatisfaction with the worker's performance. Intertwined complaints such as this prove that in reality problems arising in employment relationships did not always conform to discrete legal categories established in theory. Faced with an overall impression of a misbehaving worker, it is no wonder that magistrates like Pennington chose to try these cases summarily, the way they did other conflicts that fell explicitly under the purview of the master and servant statutes.

The particular appropriation in Castle's case also points to another factor underlying JPs' informal settlements of thefts, and this was the confusing and changing state of the law. Castle had stolen his master's corn to feed to his master's horses under his care, a surprisingly common transgression in Pennington's records. These grain thefts were liminal offences in the early nineteenth century, their status as misdemeanours or felonies inconclusively defined. When in 1811 Pennington and his fellow magistrates sitting in petty sessions committed James Blackman to the house of correction for fourteen days for stealing hops to give to the horses, some of the

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[15] KHLC, U2639/O1, Montagu Pennington, September 27, 1809, p. 7.

justices doubted "whether this offence be not a felony and therefore not punishable out of sessions." The recorder assured them, however, that it was not.[16]

Pennington obviously agreed with the recorder. He had been in the habit of dealing summarily with grain thieves since his first year on the commission, when in addition to Castle, he encountered the waggoner Isaac Falsom, who confessed to stealing his master Mr. Harrick's barley after two days of questioning. Pennington "fined [Falsom] out of his wages" as he had done in Castle's case.[17] He continued to treat the offence summarily for the next decade even after the doubts raised by his colleagues at petty sessions. In January 1812, for instance, sitting alone, he sentenced the waggoner's mate William Mount to hard labour in the house of correction for fourteen days after he confessed to stealing corn for the horses from his master, Mr. Sladen.[18] A little over a month later, Pennington summarily abated the wages of William Devell and James Dixon for the same offence.[19]

However, as the uncertainty of Pennington's brother justices demonstrated, not all authorities concurred that the theft of a master's grain was a minor misdemeanour subject to summary jurisdiction. When the high court judges considered the question in the landmark case *R. v. Morfit and Conway* (1816), they reached the opposite conclusion to the petty sessions recorder. The case was originally tried at the Maidstone Lent Assizes before Charles Abbott, two years prior to his appointment as Lord Chief Justice. Richard Morfit and Morris Conway, servants in husbandry to John Wimble, had been indicted for feloniously stealing, by means of a false key to the granary, two bushels of beans valued at five shillings, with the intention of feeding them to the horses. The jury delivered a verdict of guilty, but judgement was reserved

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[16] KHLC, U2639/O1, Montagu Pennington, January 11, 1811, p. 27; emphasis in original.
[17] KHLC, U2639/O1, Montagu Pennington, November 25, 1809, p. 8.
[18] KHLC, U2639/O1, Montagu Pennington, January 27, 1812, p. 45.
[19] KHLC, U2639/O1, Montagu Pennington, March 2, 1812, p. 45.

until the following Assizes, "considerable doubt existing whether the above facts amounted to a larceny." At Easter Term, eight of the eleven assembled judges determined that they did indeed amount to larceny, adding that the "purpose to which [Morfit and Conway] intended to apply [the beans] did not vary the case."[20]

Despite this disclaimer, the judges were interested in the motivation behind the crime. By some contemporary reports, the practice of purloining grain was an attempt by farm servants to pamper their favourite teams.[21] In the 1970s, Stephen Chaunce compiled the oral testimonies of former "horselads" who worked as farm servants in the East Riding of Yorkshire during the Edwardian period. They reported that the pilfering of cotton and linseed cakes to give to the horses in their care was "widespread and persistent." They also sometimes stole wheat and barley, which were denser grains that could cause dangerous swelling if mixed with too much water. Sometimes the lads were trying to compensate for an inadequate diet by feeding the horses additional pilfered food. Mainly, though, they were trying to make sure their animals were admirably plump, since a "pair of good fat horses" was a testament to the lad's ability and a means of earning the respect and envy of his peers.[22] It is possible that eighteenth- and nineteenth-century farm servants, such as Morfit and Conway, had similar motives in taking beans for their horses.

However, the judges saw the actions of the two servants in a different light. They claimed that the "additional beans would diminish the work of the men who had to look after the horses so that the master not only lost his beans, or had them applied to the injury of his horses, but the men's labour was lessened, so that the *lucri causa* to give themselves ease, was an ingredient in

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[20] Burn, *Justice of the Peace,* 24th ed., Vol. 3 (1825), 209-210.
[21] Kussmaul, *Servants*, 35.
[22] Stephen Caunce, *Amongst Farm Horses: The Horselads of East Yorkshire* (Alan Sutton Publishing Ltd, 1991), 116-124.

the case."[23] It is true that overfeeding could make horses sick. In one case of grain theft, tried at a petty sessions meeting in northern Kent, it was explicitly noted that the horses were suffering from "gullion," a stomach ache that "frequently destroys…quickly by its irritation."[24] Yet it is evident that the judges in *R. v. Morfit and Conway* were primarily concerned with what they perceived to be the corrupting tendency toward laziness among the labouring poor. The alleged desire for "ease" on the part of the two servants was an "ingredient" – one might interpolate 'key' ingredient – in their ruling.

This case was quickly cited in magistrates' manuals, including the next edition of Richard Burn's preeminent guidebook, which appeared in 1820.[25] Perhaps it was no coincidence that in January of the same year Pennington dealt summarily with this offence for the last time. He punished by abatement of wages two "servant lads in husbandry for misdemeanours (stealing fallow and meal for the horses)" upon the complaint of their master Mr. Pilcher.[26] At this point, he was clearly unaware of the newly disambiguated felony status of the crime. Thereafter, however, probably because of the dissemination in legal handbooks of the decision in *R. v. Morfit and Conway*, Pennington began committing workers accused of stealing their masters' corn for trial, such as Henry Brown, who in 1828 was found guilty and sentenced to four months' imprisonment with hard labour. Brown happened to be a servant to Mr. Sladen, erstwhile master of William Mount, whom Pennington had sentenced summarily for the same offence fourteen years previously.[27]

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[23] Burn, *Justice of the Peace,* 24th ed., Vol. 3 (1825), 210.
[24] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, January 24, 1844; Richard Mason, *The Practical Farrier, for Farmers* (Philadelphia: J. B. Lippincott & Co., 1857), 221.
[25] Burn, *Justice of the Peace*, 23rd ed., Vol. 3 (1820), 176.
[26] KHLC, U2639/O1, Montagu Pennington, January 22, 1820, p. 136.
[27] KHLC, U2639/O1, Montagu Pennington, February 15, 1828, p. 183.

Though Pennington seemed attuned to the developments in the legal status of grain appropriations, confusion remained. At a petty sessional meeting in Canterbury for the Western Division of the Lathe of St. Augustine in January 1844, decades after *R v. Morfit and Conway*, the magistrates William Hilton and William Delmar discharged Edward Streeter and John Ruck from their service for stealing peas for the horses.[28] It is possible that the two justices acted out of ignorance. As we saw in the Introduction, Hilton was a banker and Delmar a gentleman, both amateurs with no formal legal training in a period when it was difficult even for professionals to keep track of the burgeoning case law. Perhaps they did not have copies of guidebooks such as Burn's.

However, it is also possible that Hilton and Delmar were familiar with the ruling in *R. v. Morfit and Conway* and simply chose to ignore it, or found it more ambiguous than Pennington did. In 1834, a year before Streeter and Ruck's case, a "Subscriber" had written in to the weekly publication *Justice of the Peace* asking whether a magistrate was empowered by 4 Geo. 4, c. 34 – the Master and Servant Act of 1823 – to commit a waggoner to gaol for feeding his master's oats to the horses contrary to orders, or whether he must bind the man over to stand trial for larceny. The editor's answer cited *R. v. Morfit and Conway*, making special note of the use of a false key, the potential injury to the horses, and the diminishment of labour, and concluded "that it should be a strong case of disobedience in this respect in a servant which should be taken to constitute larceny, and when the case is doubtful, it had better be treated as a misbehaviour."[29] Clearly, magistrates were still uncertain whether grain thefts always constituted felonies. Some continued

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[28] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, January 24, 1844.
[29] John Mee Mathew, J. L. Jellicoe, T. W. Saunders, eds. *The Justice of the Peace and County, Borough, Poor Law Union and Parish Law Recorder* Vol. 7 (London: Henry Shaw, 1843), 326.

to deal summarily with the offence even after 1816, and before it was officially downgraded to a summary misdemeanour in 1863 under the statute 26 and 27 Vict. c. 103.[30]

Confusion about the state of the law, as well as the blurred lines between servants' thefts and other forms of misconduct, all contributed to the comparable summary treatment by justices of larcenies and of master and servant offences. The boundaries between these crimes and embezzlement were equally porous. As we saw in Chapter One, embezzlement was legally distinct from larceny, the essential characteristic of which was the forcible taking of goods from their owner - even if the 'force' involved was in many instances a fiction of the law. Larceny involved removing goods from the possession of an owner without the owner's knowledge or consent. In cases of embezzlement, the owner had voluntarily given the misappropriated goods into the possession of the offender. We have seen that this legal technicality raised concerns about servants and clerks who stole jewels and money entrusted to them by or for their employers only being liable for a breach of trust. Thus, statutes criminalizing the embezzlement of money and chattels were passed, culminating in the enactment of 39 Geo. III, c. 85 (1799) in the wake of *R v. Bazeley* (1799). Manufacturers in the putting-out industries faced similar frustrations. When their outworkers embezzled their materials, they could sue in civil court, but the claimable damages were small, and the offenders might be too impoverished to pay in the event that they were convicted. Therefore, beginning in the seventeenth century, Parliament also passed acts criminalizing the unauthorized appropriation of materials by workers in putting-out industries, and bringing this transgression under the summary jurisdiction of magistrates.[31]

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[30] Smith, *Treatise on the Law*, 4th ed. (1885), 487. See the cases *R v. Morfit*, *R v. Handley*, and *R v. Privett* that established the offence as larceny. Smith, *Treatise on the Law*, 4th ed. (1885), 487 (h).
[31] Soderlund, *Law, Crime and Labor,* 223-228; Styles, "Embezzlement,"188-189.

The eighteenth century witnessed a relative explosion of statutes against this new crime: fifteen were enacted between 1702 and 1792. In the second half of the period especially, these statutes made it increasingly easy for masters to bring charges of embezzlement against their workers. For example, in order to undercut the plausible defence that the accused was planning to return any materials in their possession shortly and had not actually appropriated them, a provision of 22 Geo. II, c. 27 (1749), a Frauds by Workmen Act, stipulated that any waste or surplus material not returned within twenty-one days of the task's completion could be assumed to have been embezzled. The statute 17 Geo. III, c. 56 (1777) shortened this 'grace period' to eight days, after which a worker retaining any material could automatically be prosecuted.[32]

The 1749 act further required defendants to provide proof of legal ownership of any industrial materials discovered in their dwelling places or workshops during the course of searches conducted under a magistrate's warrant, which could be issued against suspected embezzlers with previous convictions on the strength of evidence given by a single sworn witness. The 1777 act removed the prior convictions condition for the search of suspects' homes, and mandated that anyone failing to establish ownership of materials be found guilty of a misdemeanour and subjected to heavy penalties. In 1824, for instance, a textile worker in Cheshire was fined £20 for having in his possession some silk for which he could not account.[33]

Not only did it become easier for masters to secure convictions, but the penal provisions of the embezzlement statutes also grew increasingly severe over the course of the eighteenth century. The 1749 act decreed that convicted embezzlers, who under previous legislation had the option of paying a fine as an alternative to corporal punishment, must be automatically whipped.

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[32] Soderlund, *Law, Crime and Labor*, 257-261.
[33] Cheshire Archives and Local Studies (CALS), D4655, Thomas Allen of Macclesfield Justice of the Peace Notebook, February 21st, 1824.

It also allowed for the imprisonment of first-time offenders in the house of correction for up to 14 days with hard labour, and for even harsher sentences of one to three months for repeat embezzlers. The 1777 act increased these terms to a minimum of one month and maximum of three for first-time convicts, and an upper limit of six months for recidivists.[34]

Scholars continue to debate the impetus behind the embezzlement statutes. Some, such as Richard Soderlund and Craig Becker, view the legislation as a response to problems of industrial discipline emerging in the eighteenth century. The harsh new carceral and corporal penalties were part of an attempt to criminalize workers' customary rights that went hand in hand with the development of capitalism and the exploitation of labour.[35] John Styles disagrees with these interpretations, contending that problems of industrial discipline, such as the false and short reeling of yarn, were not new to this period. Moreover, he disputes that there was a decisive eighteenth-century criminalization of workers' appropriations. Since the pre-1749 statutes still subjected offenders incapable of paying fines to whipping or imprisonment, Styles suggests that embezzlement was already effectively criminalized in theory. Furthermore, he conjectures that the offence might also have been criminalized in practice before 1749 if the majority of convicted embezzlers had been unable to offer restitution and were thus subjected to corporal or custodial punishments anyway, though it is difficult to find evidence to test this hypothesis before the mid-eighteenth century, when the return of conviction certificates to Quarter Sessions became mandatory (a directive that was nevertheless generally ignored). For Styles, the new embezzlement laws do not represent a systematic effort to regulate the offence and discipline

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[34] Soderlund, *Law, Crime and Labor*, 231-255.
[35] See: Soderlund, *Law, Crime and Labor*; Richard J. Soderlund, "'Intended as a Terror to the Idle and Profligate': Embezzlement and the Origins of Policing the Yorkshire Worsted Industry, c. 1750-1777," *Journal of Social History* 31 (1998): 647-669; Craig Becker, "Property in the Workplace: Labor, Capital, and Crime in the Eighteenth-Century British Woolen and Worsted Industry." *Virginia Law Review* 69 (1983): 1487-1515.

labour, but rather the "accumulated legacy" of many "local legislative initiatives" launched in reaction to long-standing industrial difficulties. He situates the statutes in the context of a general increase in harsh penal practices and an overall growth in legislation attributable to a more readily available Parliament in the wake of the Glorious Revolution.[36] Critics argue, though, that his analysis minimizes the significance of the eighteenth-century acts' departure from past practice and assumptions in their emphasis on criminal, not civil, penalties.[37]

These statutes can be seen as part of the same project on which master and servant legislation was engaged – the subordination of labour. As Soderlund observes, the purpose of the eighteenth-century embezzlement acts was not only to punish the theft of industrial materials and signal the determination of authorities to stamp out the practice, but also to enforce work discipline. For masters and manufacturers, these issues were "intimately linked." Together, the two bodies of law defined disobedience and appropriations by workers as crimes. They provided for the increasingly severe treatment of servants over the course of the period. They were complementary and overlapping in both scope and application. Beginning with the statute 12 Geo. I, c. 34 (1725), some embezzlement acts could be used to prosecute workers who left their employment before the end of the terms for which they had contracted.[38] For instance, Samuel Woodland of Buckinghamshire was sentenced to a month of hard labour in the Aylesbury House of Correction under 13 Geo. II, c.8 (1739), another Frauds of Workmen Act, for leaving his service, his work being unfinished.[39] Provisions like these helped broaden the legal basis for the

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[36] Styles, "Embezzlement," 189-197; John Styles, "Spinners and the Law: Regulating Yarn Standards in the English Worsted Industries, 1550-1800," *Textile History* 44 (2013): 145-146.
[37] Soderlund, *Law, Crime and Labor*, 248-251.
[38] Soderlund, "Intended as a Terror," 651; Soderlund, *Law, Crime and Labor*, 262-264.
[39] CBS, PS/SS/M/1, Stony Stratford Petty Sessions, March 21st, 1828.

control and subjugation of labour at a time when confusion still existed about whether or not industrial workers and outworkers were covered by master and servant laws.[40]

Moreover, the lines between larceny and embezzlement were not as clearly defined in practice as they seemed to be in theory – an ambiguity that employers could use to their advantage. Soderlund asserts that workers in factories and workshops who embezzled material could be charged with larceny, since the law construed the material as remaining in the owner's physical possession so long as it was on his property. Thus, the material's removal from the work site constituted a forcible taking.[41] Burn notes that the statute 7 & 8 Geo. IV c. 29 (1827) made it a transportable offence for a person to steal to the value of 10 shillings "any goods or article of silk, woolen, linen, or cotton, or of any one or more of these materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place." He observes that it was not stipulated in "express terms" whether this offence was deemed a misdemeanour or a felony, but concluded that it "should seem it is a *felony*."[42]

As Barry Godfrey and David Cox point out, convoluted and overlapping embezzlement and larceny laws could prove confusing to magistrates, but helpful to employers. The latter could capitalize on the "imprecise 'fit' of anti-appropriation legislation to the circumstances and methods of workplace appropriation" by choosing the statutes under which to prosecute their workers, and thereby the courts in which to try them. [43] Charging workers with larceny meant a trial at Quarter Sessions or Assizes, and the chance of more severe penalties. For instance, the JP

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[40] Deakin and Wilkinson, *Law of the Labour Market*, 63; Hay, "England," 87-88.
[41] Soderlund, *Law, Crime and Labor*, 224-225.
[42] Burn, *Justice of the Peace*, 29th ed., Vol. 3 (1845), 1146-1147.
[43] Barry Godrey and David J. Cox, *Policing the Factory: Theft, Private Policing and the Law in Modern England* (London: Bloomsbury, 2013), 24-25.

Richard Wyatt recorded that three journeymen plumbers who made off with £19 worth of lead from their work site in Surrey were tried at the Kingston Assizes, where one was sentenced to seven years' transportation.[44]

Charging workers with embezzlement, on the other hand, allowed for a summary hearing – perhaps at a petty sessions where the justices, like the plaintiffs, were also industrialists and thus very willing to convict.[45] For example, the Macclesfield magistrate Thomas Allen, who "threatened and dismissed" Elizabeth Bell for stealing silk waste from the Poynton Parrs factory where she was employed, was himself formerly a silk dyer.[46] Nathaniel Chandler, one of the JPs at the Tewkesbury petty sessions who summarily sentenced Mary Merrick to a fortnight of hard labour in the house of correction for "purloining and secreting" more than a pound of silk threads from the silk factory of the infamous speculator Humphrey Brown, was also a hosier.[47] Clearly, it was an advantage for employers to be able to select from a number of options when choosing a law under which to prosecute appropriators. It also demonstrates once more the inter-connections between larceny and embezzlement, both of which were similarly imbricated with master and servant offences as well.

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[44] *Deposition Book of Richard Wyatt,* 19-20.
[45] Godrey and Cox, *Policing the Factory*, 25.
[46] CALS, D4655, Thomas Allen, June 3rd, 1823; PP 1837-1838, Vol. 35, "Municipal Corporations (England and Wales). Reports Upon Certain Boroughs, Drawn by T. J. Hogg, Esquire," 686, p. 56.
[47] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, June 3, 1853, p. 385; "Tewkesbury Council," *The Tewkesbury Yearly Register and Magazine,* ed. James Bennett, Vol. 1 (Tewkesbury: James Bennett, 1840), 257. Humphrey Brown, a native son of Tewkesbury, was, in the estimation of Hargrave Jennings, "as remarkable an adventurer as the [19th] century has produced." His storied career included stints as a carrier and barge owner, a bankrupt, a cement manufacturer, an MP, and the director of the Royal British Bank, and eventually ended with him as an "outlawed exile, a melancholy example of the sin of inordinate speculation." Prior to his final fall from grace, and having accumulated a fortune during the railway mania of 1846, he turned the Tewkesbury theatre into a silk factory, among other undertakings. Hargrave Jennings, *The Childishness and Brutality of the Time: Some Plain Truths in Plain Language* (London: Vizetelly & Co., 1883), 338-339.

Servants' Illicit Takings: The Gendered Pattern of Larcenies and Embezzlements

Contemporary anxieties about workers' appropriations seem to have been grounded in reality. Styles observes that the practice of industrial embezzlement was "undoubtedly…very extensive." The sale of their illicit takings offered a significant supplement to the wages of putting-out workers and could serve as a counterbalance to the various abatements, deductions, and manipulations to the piece rate perpetrated by masters, including payment in truck and, in the textile industries, the lengthening of warping bars to increase the volume of work for weavers at no additional remuneration.[48] Similarly, Beattie asserts that the level of servants' thefts was "very high indeed," spurred by the drudgery, low wages, frequent abuse, and disparity of wealth on constant display that characterized their working lives.[49]

Together, theft and embezzlement account for 282, or 17%, of all accusations made against servants in the Pre-Sentencing Database and 134, or 6%, of those in the Post-Sentencing Database. These prosecutions certainly do not represent all of the appropriations committed by workers, but it is impossible to determine the dark figure of unreported incidents. As Beattie observes, the harshness of the potential punishments for thieving servants – who could be hanged for stealing from their masters' dwelling places and transported for embezzling their masters' funds, for instance – might have deterred some employers from prosecuting their dishonest workers, opting simply to fire them instead.[50] It is also worth noting that some of the largest textile districts in this period, such as the West Riding of Yorkshire, are not represented in my datasets. Embezzlement especially would likely have formed an even greater share of overall cases if these areas had been included in the regional make-up of the dissertation's source base.

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[48] Styles, "Embezzlement," 178-185.
[49] Beattie, "Criminality of Women," 92-93.
[50] Beattie, "Criminality of Women," 92.

Nevertheless, though they might be just the tip of the iceberg of workers' illicit appropriations, the cases in both databases can shed light on the gendered nature of these offences. Deborah Valenze claims that both industrial embezzlement and domestic theft were "source[s] of suspicion and anxiety aimed at women."[51] While the majority of servants who stole and secreted their masters' possessions were men, these crimes were still more 'feminized' than many other employment-related infractions. Women workers made up a greater proportion of alleged thieves and embezzlers than they did of defendants in employment disputes generally. While overall they constituted 307, or 18%, of the accused workers in the Pre-Sentencing Database, they accounted for 58, or 21%, of those charged with larceny and embezzlement combined. They were particularly overrepresented in cases of industrial embezzlement, in which they made up 25, or 31%, of all defendants.

The same pattern holds true in the Post-Sentencing Database, as well. Women made up 358, or 17%, of all inmates but 31, or 23%, of those convicted of illicit appropriations. In fact, female servants formed a larger percentage of thieves and embezzlers than they did of workers convicted of any other employment crime in the Post-Sentencing Database. Illicit appropriations also made up a slightly larger share of the charges brought against women workers than men in both databases. These transgressions made up 58, or 19%, of the total prosecutions against female servants in the Pre-Sentencing Database and 31, or 9% of them in the Post-Sentencing Database, compared to 227, or 17%, and 103, or 6%, respectively for male workers.

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[51] Valenze, *First Industrial Woman*, 27.

Theft	Female Workers	Male Workers
Money	7 (22%)	11 (10%)
Grain (including for horses)	1 (3%)	45 (42%)
Clothing/Shoes	15 (47%)	8 (7%)
Jewellery	3 (9%)	0 (0%)
Food/Drink	2 (6%)	16 (15%)
Tools/Materials of Trade	0 (0%)	8 (7%)
Metals	0 (0%)	1 (0.9%)
Theft from Workshop/Factory	2 (6%)	2 (1.8%)
Other	1 (3%)	13 (12%)
Unspecified	1 (3%)	4 (3.7%)
Total	**32**	**108**

Table 3.1 – Types of Thefts in Pre-Sentencing Database by Gender of Worker
The percentage in parentheses indicates the share of all thefts by workers of each sex made up by that particular category. This table excludes embezzlement.

Theft	Female Workers	Male Workers
Money	5 (36%)	4 (11%)
Grain (including for horses)	0 (0%)	9 (25%)
Clothing/Shoes	5 (36%)	2 (6%)
Jewellery	0 (0%)	1 (3%)
Food/Drink	1 (7%)	5 (14%)
Tools/Materials of Trade	0 (0%)	4 (11%)
Metals	0 (0%)	6 (17%)
Theft from Workshop/Factory	0 (0%)	0 (0%)
Other	3 (21%)	5 (14%)
Unspecified	0 (0%)	0 (0%)
Total	**14**	**36**

Table 3.2 – Types of Thefts in Post-Sentencing Database by Gender of Worker
The percentage in parentheses indicates the share of all thefts by workers of each sex made up by that particular category. This table excludes embezzlement.

However, as Tables 3.1 and 3.2 indicate, the share of female thieves varies depending on the type of item being taken. For instance, the theft of grains, corn, oats, wheat, and other cereals was almost exclusively the preserve of men. Only one case involved female servants. Sarah James and Caroline Sadler, along with Thomas Sadler, were charged by their master Walter

Buckle with stealing a peck of his wheat while reaping.[52] Otherwise, the accused were all men. Grain theft made up 9 of the thefts carried out by male servants in the Post-Sentencing Database, or 25% them, and 45, or fully 42% of them, in the Pre-Sentencing Database.

Many of these men were stealing grain for the horses in their care – in at least one case in the Post-Sentencing Database and at least 12, or 27% of them, in the Pre-Sentencing Database. It is likely that in more instances the stolen grain was intended for horses as well and the clerks recording the cases just did not explicitly mention the use to which it was being put. With three exceptions, all of these cases came from Kent. Indeed, stealing grain for the horses was so frequent in the northeast of this county that Pennington and his fellow magistrates committed James Blackman to bridewell for the offence in 1811 because they found it "necessary to make an example" of him.[53] Even *R v. Morfit and Conway* (1816), the case that (theoretically) established grain theft as a felony, originated in Kent. Despite the growth of urban settlements in the eighteenth century, large swaths of the county remained agrarian. In the north, cultivation focused on cereals, hops, and fruit. Kent was an important supplier of grain to the hungry metropolis thanks to its waterborne trade routes, proximity to London, and arable farmland.[54] It is not surprising that grain theft featured prominently in this county.

Female servants were not prosecuted for this particular offence because in all likelihood they were not committing it. The care of horses and draught animals on farms traditionally fell to the men, while the women would tend to the poultry, milk the cows, and manage the dairy.[55] Not

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[52] GA, PS/CH/M1/1, Cheltenham Petty Sessions, August 7, 1834.
[53] KHLC, U2639/O1, Montagu Pennington, January 11, 1811, p. 27; emphasis in original.
[54] Mary Dobson, "Population: 1640-1831," *The Economy of Kent, 1690-1914*, ed. Alan Armstrong, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 1995), 14-15; Tom Richardson, "Labour," *The Economy of Kent, 1690-1914*, ed. Alan Armstrong, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 1995), 241-243, 255; Mingay, "Agriculture," 58.
[55] Kussmaul, *Servants*, 34.

being responsible for the horses' feeding, female servants had no incentive to steal additional grain for them. Moreover, although women were widely employed in Kent cultivating hops, and orchard and garden crops – activities that demanded a lot of manual dexterity – arable farming, with its greater emphasis on physical strength, fell mainly to men.[56] Once again, the sex-selective division of labour helps to explain why women were apparently not stealing cereal – they did not have the same opportunities to do so as the men who more frequently worked with these crops.

Similar factors likely contributed to the fact that trade tools and metals made up 9, or 8%, of male workers' thefts in the Pre-Sentencing Database and 10, or 27%, of them in the Post-Sentencing Database, while not featuring at all among female workers' thefts, as Tables 3.1 and 3.2 indicate. The "pale" and "pockmarked" Charles Brown, for instance, was imprisoned with hard labour for three calendar months for "stealing a quantity of carpenter's tools and a frail basket" from his master William Brandon, for whom he had been working "as a carpenter" for the past six months.[57] William Hancock was accused at Canterbury Quarter Sessions of stealing eight pieces of iron from the shop of his master John Arney, a smith.[58] Women were less likely than men to work in artisanal trades and heavy industry, especially as the eighteenth century progressed. Therefore, they had less opportunity than men to steal the supplies of these trades from their masters.

It is less clear why food and drink made up a larger proportion of the items stolen by male servants than female servants. As Tables 3.1 and 3.2 reveal, food and drink comprised a share of male workers' total thefts at least twice as large as they did of female workers' total thefts in both the datasets. They accounted for 2 thefts by female servants, or 6% of them, in the

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[56] Richardson, "Labour," 238, 241; Snell, *Annals*, 38, 40-45, 60-62; Kussmaul, *Servants in Husbandry*, 15.
[57] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoner 2060.
[58] KHLC, U951/O5, Sir Edward Knatchbull, "William Hancock and Philip Woolley," July 11, 1820.

Pre-Sentencing Database, and 1, or 7% of them, in the Post-Sentencing Database, compared to 16, or 15%, and 5, or 14%, of thefts by male servants in the respective databases. Interestingly, this finding contradicts those of Garthine Walker and Drew Gray that women stole food in higher proportions than men. Walker, studying the gendered pattern of theft in seventeenth-century England, asserts that "food and fowl," "butter, cheese, chickens, capons, hens, pigs, geese" were all among commodities more likely to be stolen by women because they were the ones responsible for marketing them. In his examination of theft cases in late-eighteenth-century London summary courts, Gray lists "food" among the items that women in the metropolis were charged with stealing more often than men because these items were "consistent with their gendered sphere."[59] On the other hand, Lynn MacKay found in her analysis of theft prosecutions at the Old Bailey in the third quarter of the eighteenth century that men were more likely than women to steal food.[60]

In the sources examined here, thefts of food and drink ran the gamut from relatively large-scale larcenies, such as Gloucestershire gardener Thomas Watkins carrying away "50 broccoli plants" belonging to his employer, the solicitor James Wintle of Newnham, or Kentish cook Sarah Garlinge stealing twenty pounds of pork from her master William Nethersby with the help of her husband or relative James Garlinge; to the middling scale, such as Shropshire servant Elizabeth Williams stealing "divers quantities of butter" at "sundry times;" to the pettiest infractions, such as the Tewkesbury shop boy Charles King pilfering his master's sugar candy or

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[59] Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge: Cambridge University Press, 2003),169; Gray, *Crime, Prosecution*, 75-76.
[60] Lynn MacKay, "Why They Stole: Women in the Old Bailey, 1779-1789," *Journal of Social History* 32 (1999): 265.

the Bicester worker Joseph Sturman helping himself to half a pint of his employer's beer.[61] Female and male servants had similar motives in stealing food and drink – likely hunger and thirst in the more trivial cases, and illicit profits in the instances of more significant thefts.

It is possible that food and drink made up a larger share of male workers' larcenies than of female workers' because the former were more likely than the latter to be prosecuted for large and small thefts alike. The female servants charged with stealing food and drink include women such as Sarah Garlinge, thief of twenty pounds of pork, and Martha Davies and Ann Andrews of Shropshire, who were accused of feloniously taking a quantity of elder wine and a sixteen quart pail of ale out of the cellar of their master Edward Davis and conveying it to the home of a receiver named Francis Smith.[62] While some of the male defendants, such as Thomas Watkins the broccoli thief, had also purloined comparatively large amounts of food or drink, others, such as the shop boy Charles King, had stolen fairly modest quantities of their employers' edibles. Montague Pennington in Kent reprimanded another pair of servant "boys" for stealing some of their master Mr. Woodward's eggs and bacon.[63] Perhaps masters only tended to prosecute women workers for the most egregious food larcenies, but more readily brought male workers before magistrates for all infractions of this nature – especially boys, whose petty pilfering might have seemed to their employers to be emblematic of a general lack of discipline. For example, in addition to accusing his servant boys of stealing eggs and bacon, Mr. Woodward also charged

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[61] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoner 2187; Kathleen Morgan and Brian S Smith, "Newnham: Manors," *A History of the County of Gloucester*, Volume 10: Westbury and Whitstone Hundreds, ed. C R Elrington, N M Herbert and R B Pugh (London: Victoria County History, 1972), 36-40, accessed June 10, 2015, http://www.british-history.ac.uk/vch/glos/vol10/pp36-40; KHLC, U951/O5, Sir Edward Knatchbull, January 14, 1822; SA, QS/10/1, Calendar of Prisoners, 1786-1800, No. LXXXI, Prisoner 25, p. 2; GA, PS/TW/B/M1/1,Tewkesbury Petty Sessions, 1829-1853, p. 260; OHC, Trum I/5, Bicester Petty Sessions, June 8th, 1853, p. 361.
[62] SA, QS/10/2, Calendar of Prisoners, No. 2, April 15, 1806, Prisoners 5 and 6, p. 1.
[63] KHLC, U2639/O1, Montagu Pennington, February 27, 1811, p. 30.

them with "other ill behaviour." Perhaps female servants were less prone to steal small bits of food impulsively out of hunger or craving the way boys like Charles King did. Thus, the comparatively small share that food and drink made up of their total thefts might reflect the fact that food was not the most coveted object of larcenous women workers.

As Tables 3.1 and 3.2 indicate, the primary target of thieving female servants was clothing. This was the item most commonly stolen by women workers in both the Pre- and Post-Sentencing Databases, accounting for 15, or 47%, of their thefts in the former and 5, or 36% of them, in the latter. By comparison, clothes made up just 8, or 7%, and 2, or 6%, respectively of male workers' total larcenies in the two datasets. These findings confirm those of Walker, looking at the seventeenth century, and MacKay and Gray, studying the eighteenth century, that clothing comprised a larger proportion of women's thefts than it did of men's.[64] Moreover, female servants committed about two-thirds of all clothing thefts in my sources – 65% of them in the Pre-Sentencing Database, and 71% of them in the Post-Sentencing Database. With the exception of money in the latter dataset, clothing and adornments were the only items that female servants stole more often than male servants did, not only relatively but also absolutely.

In order to explain the predilection of women workers for stealing clothing, it is necessary to investigate the incentives behind these thefts. On the one hand, workers might take their employers' clothing in order to dispose of it illicitly at a profit. The eighteenth century witnessed a new and growing consumer demand that was transforming the material lives of English men and women at all levels of society, a revolution perhaps most graphically illustrated by clothing. Patricians and plebeians alike aspired to own stylish attire.[65] As Beverly Lemire has

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[64] Walker, *Crime, Gender and Social Order*,162-165; MacKay, "Why Women Stole," 625; Gray, *Crime, Prosecution*, 76.
[65] John Styles, *The Dress of the People: Everyday Fashion in Eighteenth-Century England* (Yale

shown, in addition to the manufacture of new pieces there was a flourishing second-hand trade in garments, supplied through both legal and illegal channels. Clothes were in high demand and easy to unload in this market, inducing many servants to appropriate their masters' apparel for re-sale.[66] Mary Reece of Ludlow, for instance, who had been caught by her mistress with "the baby's nightgown tied round her middle" as she attempted to smuggle it out of the house, must have intended it for the market, being neither an infant nor a mother herself.[67]

Yet in a "surprising number of instances," as Lemire attests, servants stole their employers' clothing not in order to sell or exchange it, but to wear it, despite the threat of identification. They were tempted into larceny by the desire to be fashionably dressed.[68] In Kent, for example, Mary Welland was convicted of theft after her mistress caught her wearing her petticoat.[69] It is this second motivation, the impulse to possess the stolen clothes for themselves, which sheds light on the larger proportion of women than men appropriating apparel.

Clothing played a significant role in the lives of female servants. Owing to its value, it often featured as a bargaining chip in the employment relationship. Masters would sometimes entice workers into their service by agreeing to provide a suit or two of clothes in addition to wages, or they might withhold their servants' clothing out of anger at perceived misdeeds or contract breaches. For instance, as we saw in the Introduction, Mr. Sladden of Kent took out his frustration at his cook Sophia Wanstall running away by refusing to give up her clothing when she came back to collect it and then (allegedly) kicking her and throwing her things out the back

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University Press, 2007), 8.
[66] Beverly Lemire, "The Theft of Clothes and Popular Consumerism in Early Modern England," *Journal of Social History* 24 (1990): 257, 261; Beverly Lemire, "Consumerism in Preindustrial and Early Industrial England: The Trade in Secondhand Clothes," *Journal of British Studies* 27 (1988): 1.
[67] SA, PS1/2/A/1/1, Ludlow Petty Sessions, May 13, 1851.
[68] Lemire, "Theft of Clothes," 264.
[69] KHLC, U951/O6, Sir Edward Knatchbull, January 1, 1834.

door when she grabbed her clothes herself.[70] In Oxfordshire, Mary Stockford's master turned her away from her service for an unspecified infraction and obviously held back her attire along with the money he owed her, since the magistrates at the Bicester petty sessions ordered him "to pay wages, give up the clothes and to pay 5s 6d clerk's costs."[71]

Of course, such incidents did not exclusively involve female servants. Male workers might also receive clothing as part of their wages, such as Hampshire labourer Thomas Blackman who was hired as a yearly servant for "three guineas and two suits of clothes," and then turned away without compensation by his master William West.[72] Their masters sometimes withheld their clothes too, as when Thomas Richardson in Northamptonshire beat his servant and turned him out of doors then refused to give up his wages or his garments.[73] Yet clothing was an especially important commodity for female servants. John Styles has shown that for them it represented accumulated capital as well as the opportunity to cut a fashionable figure. Moreover, it was an investment in a potentially brighter, more financially secure future, since being well dressed could help women to obtain employment in more prosperous households or to attract a husband.[74]

Clothing could also prove controversial. Indeed, contemporaries were concerned that female servants were spending ruinously on articles of dress and blurring carefully cultivated distinctions of rank, as private correspondence and published works both attest.[75] For instance, Frances Taylor née Duke, great-grandmother of the first baron Coleridge – a future Lord Chief

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[70] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, May 13, 1843.
[71] OHC, Trum I/2, Bicester Petty Sessions, September 11, 1840.
[72] HALS, 6M73/XP59, Droxford Petty Sessions, January 29, 1835.
[73] NRO, Misc. Photostat 1249, Oundle JP notebook of Philip Ward, 1748-1751, p. 22.
[74] John Styles, "Involuntary Consumers? Servants and Their Clothes in Eighteenth-Century England," *Textile History* 33 (2002):18-19.
[75] Styles, "Involuntary Consumers," 9.

Justice of England – often discussed the hired help in letters to her daughters, Fanny and Dorothy.[76] In September 1773 she wrote from Islington, in response to their query about her new maid Molly's clothing, that Molly was "a very decent dresser." She wore "neat decent mobs under the Chin," a style of cap that had somewhat fallen out of fashion in the 1770s. Frances told her daughters she had assured Molly that though she had also brought a fancier "round cap" to her new place, she "like[d] her in her mobs much better."[77]

Mrs. Parkes, author of *Domestic Duties*, was more pointed about the undesirability of female servants dressing 'above their station':

> Suitableness of dress, is a point on which our maid-servants require frequent admonition. The cheapness of the various articles of dress, affords them the means of gratifying their vanity; and it seems incumbent on mistresses to point out to them how injurious that vanity is to their best interests: how it prevents them being able to accumulate even a small sum, by which their prospects in after life might be improved; and how much better they would appear in a dress proper for their station and employments, than in one which only betrays a vain attempt to imitate their superiors, and which, after all, renders vulgarity only more obvious. … [T]he female domestic who wishes to render her person particularly attractive, or her dress fashionable, is a dangerous inmate; and cannot be supposed to have her mind sufficiently engrossed in her duties to perform them faithfully.[78]

Even the high court judges objected to servants dressing 'unsuitably.' In 1829, Justice Bayley heard the case of *Hedgley v. Holt*, an assumpsit brought by a husband against his wife's former master for wages due to her from her time as a servant of all work, when she had been

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[76] Fanny – Frances Duke Taylor – went on to marry Colonel James Coleridge, brother of the famous poet Samuel Taylor Coleridge. Her grandson John Coleridge would become a Lord Chief Justice of England. David Pugsley, "Coleridge, Sir John Taylor (1790-1876), *Oxford Dictionary of National Biography*, Oxford University Press, 2004, online edn, Oct 2006. [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/5887, accessed 26 Nov 2016];
[77] Bodleian Library, MS Eng. Letters c. 142, Taylor Family Correspondence, September 8, 1773, p. 8; Georgine de Courtais, *Women's Hats, Headdresses and Hairstyles: With 453 Illustrations, Medieval to Modern* (Mineola, New York: Dover Publications, 1973), 84.
[78] Parkes, *Domestic Duties* (1838), 115-116.

unmarried and underage. The master claimed that she had received at different times money equal to the amount due to her. However, it turned out that some of these sums consisted of payments made for a silk dress, a reticule, lace for caps, and "various other articles." Bayley found in favour of the plaintiffs, reasoning that an infant could not bind herself for "things which are not necessary" or the consequences would be "very injurious." He elaborated: "Here is a female, who is described as rather a showy woman, suffered to dress in a manner quite unfitted to her station; and, at the end of her twelve months' servitude, she would not have a farthing in her pocket [if the payment for this dress was subtracted from her wages]."[79] It is clear from Bayley's censorious tone that his objection was not just to the girl's being left penniless at the end of her term by this 'wasteful' expenditure, but also to servants dressing above their "station." The clothes that her master bought for her were deemed 'unnecessary' purchases because they were too "showy."

The profound class anxiety triggered by fashionable maids testifies to a less tangible but equally valuable use of clothing for female servants, in addition to being a sound financial investment for them. Clothing was constitutive of identity. William Meier has observed of female servants in the nineteenth century that clothing helped them define themselves as "young, modern" women.[80] To some extent, this stylish identity erased the distinctions between maids and mistresses. The visual conflation of the upper and lower orders raised the disturbing possibility that distinctions of rank were not timeless and unalterable. Indeed, Dror Wahrman points out that clothes both anchored identity and, conversely, revealed the "mutable and non-

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[79] *Hedgley v. Holt* (1829), 4 Car. & P. 104, 172 Eng. Rep. 627.
[80] William M. Meier, *Property Crime in London, 1850-Present* (Basingstoke: Palgrave Macmillan, 2011), 75.

essential nature of what can be assumed or shed at will."[81] Valenze describes clothes as a "passport into another class, at least in appearances."[82] These "passports" were coveted possessions. Sometimes, the quickest and simplest means of acquiring them was for female servants to appropriate the garments they saw on constant display around them as they worked.

This was the context in which female servants stole more clothing than their male counterparts. They were motivated not only by the opportunity that a thriving second-hand market offered to dispose easily and profitably of any purloined attire – a prospect that also spurred on male thieves – but also by the significant allure of fashion. For the same reasons, women also stole jewellery proportionately more often than men. As Tables 3.1 and 3.2 show, jewellery accounted for 3, or 9% of female servants' total thefts in the Pre-Sentencing Database, and 1, or 3%, of male servants' in the Post-Sentencing Database. Between the two datasets there were only four jewellery thieves, but 75% of them were women. The lone male defendant was the footman Joseph Townley, who stole a candlestick and a ring from his employer Thomas Champion, wealthy proprietor of Malden Court.[83] In her study of gendered theft prosecutions at the Old Bailey, MacKay also found that women were more likely than men to steal jewellery. Most of the offenders in the cases she examined were prostitutes.[84] However, they probably had motivations similar to those of the female servants who stole their employers' jewels.

Some of these women might have hoped to sell what they took. Perhaps that was what Margaret Hellier, maid of a Gloucester apothecary, was planning to do with the necklace of

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[81] Dror Wahrman, *The Making of the Modern Self: Identity and Culture in Eighteenth-Century England* (New Haven: Yale University Press, 2004), 178.
[82] Valenze, *First Industrial Woman*, 163.
[83] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoner 1960; Rev. Beaver H. Blacker, ed. *Gloucestershire Notes and Queries*, Vol. 4 (London: Simpkin, Marshall, Hamilton, Kent, & Co., Limited, 1890), 308.
[84] MacKay, "Why They Stole," 626.

stones set in silver that her mistress, Elizabeth Safford, found on her. Several items, including an ivory comb, some lace edging, a muslin handkerchief, a cambric mob, and this necklace, valued at £9, had gone missing over the past five weeks. Suspecting Margaret, Elizabeth ordered her to turn out her pockets, where the necklace was found. Margaret claimed in her defence that she had picked the necklace up the day before and simply forgotten to deliver it to her mistress as she had meant to do. The Saffords, however, believed that Margaret intended to take it feloniously out of the house.[85]

Other women might have stolen jewellery to keep it for themselves. Ellinor Ellendon was charged before Montague Pennington by her master, a major in the Walmer Barracks, with having stolen a diamond ring and gold chain out of an unlocked, unattended trunk while the family was packing to remove to London. Ellinor had been the only servant present in the house, and the major's two young daughters, "one in her 11th year on oath, & both very competent," testified that she had put the ring on her finger and remarked on how well it fit her, though Ellinor denied ever touching the items. Pennington eventually "completely discharged" the maid after the major's wife declared that she had "never had reason to suspect the girl of dishonesty."[86]

It is possible that Ellinor was the victim of a malicious prosecution by her master. Hay has shown that most cases of malicious prosecution took place in three types of relationship, one of which was employers prosecuting their servants. Masters made false accusations of theft against servants for a variety of reasons, including a wish to avoid paying wages, in money or in kind; a desire to dismiss a servant without a legally justifiable cause for doing so; or personal vindictiveness over a quarrel. Servants might find it difficult to defend themselves from

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[85] GA, Q/SD/1, Quarter Sessions Informations and Examinations, 1738, p.12B-12C.
[86] KHLC, U2639/O1, Montagu Pennington, January 21st, 1825, p. 168-169.

malicious charges, since they had the opportunity to steal and were often perceived to be less credible than their higher-status employers.[87]

Whether the prosecution was malicious, or a mistaken accusation made in good faith – or whether Ellinor was actually guilty of the theft – it is telling that the main evidence presented was the claim of her master's daughters that she had tried on the ring and admired the look of it on her hand. Even if this testimony was fabricated, the notion of a servant coveting her mistress's jewels was clearly plausible enough that Ellinor's master felt it would credibly incriminate her in the eyes of the magistrate. While some servants hoped to profit off the articles they purloined, others were driven by the longing to be stylishly and beautifully apparelled.

How Servants Stole: Gendered Means of Appropriation

The motivation to steal employers' money was probably the same in most cases for servants of both sexes. Men and women had equal need of and uses for money. However, it did not comprise equal shares of male and female workers' thefts. As Tables 3.1 and 3.2 demonstrated, thefts of money made up 7, or 22%, of all female servants' appropriations in the Pre-Sentencing Database, and 11, or just 10%, of male servants' appropriations. This disparity was even more pronounced in the Post-Sentencing Database, where money accounted for 5, or 36%, of female inmates' thefts, compared to 4, or 11%, of men's. Furthermore, women workers were responsible for more than half – 5 of 9, or 56% – of all monetary thefts in this dataset.

In order to shed light on why money, a universally tempting target, made up a much larger proportion of female servants' thefts than of their male counterparts', it is necessary to

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[87] Douglas Hay, "Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850," *Policing and Prosecution in Britain, 1750-1850*, eds. Douglas Hay and Francis Snyder (Oxford: Oxford University Press, 1989), 367, 373-374.

examine the means by which workers took it. There were two methods they might use – embezzlement and larceny. As we have seen, these were separate offences at common law. Larceny hinged on the forcible removal of goods from the owner's possession, whether actual or constructive, while embezzlement entailed the deceitful appropriation of goods voluntarily entrusted to the perpetrator by the owner or a third party. The latter was originally considered a breach of trust – a civil wrong – though it was criminalized by statute, first in the reign of Henry VIII and then again in the eighteenth century, along with other non-larcenous types of appropriation as part of the legal metamorphosis of theft.[88]

	Female Servants	Male Servants
Stealing Money	7 (87.5%)	11 (15%)
Embezzling Money	1 (12.5%)	63 (85%)
Total	**8**	**74**

Table 3.3 – Method of Appropriating Money by Servants' Gender in Pre-Sentencing Database
The number in parentheses indicates the share of each gender's monetary appropriations made up by larcenously stealing and by embezzling.

	Female Servants	Male Servants
Stealing Money	5 (100%)	4 (66.7%)
Embezzling Money	0	2 (33.3%)
Total	**5**	**6**

Table 3.4 – Method of Appropriating Money by Servants' Gender in Post-Sentencing Database
The number in parentheses indicates the share of each gender's monetary appropriations made up by larcenously stealing and by embezzling.

Tables 3.3 and 3.4 make clear that male servants were proportionately much more likely than female servants to be charged with embezzling their masters' money, while female servants were proportionately more likely than male servants to be charged with stealing it larcenously. In 63, or 85%, of the cases in the Pre-Sentencing Database in which male workers had taken their

[88] The statutes in question are 21 H8 c. 7 (1529) and 39 Geo. III, c. 85 (1799). Burn, *Justice of the Peace*, 24th ed., Vol. 3 (1825), 215-217; Stephen, *Selected Writings of James Fitzjames Stephen*, 92; Fletcher, "Metamorphosis of Larceny," 470-474; Green, "Property Offences," 74.

employers' money, they had embezzled it. In the records of the Bicester petty sessions, for instance, there were seven male servants accused of embezzling sums from their masters, including Harry Walker Greenwood, who had received on account of his employer George Harris "certain monies" which he converted to his own use.[89] Greenwood and the other Bicester defendants represented less than a third of all the male workers charged with embezzlement in Oxfordshire alone, and that county did not even boast as many male embezzlers as did Shropshire. Seven other counties also fielded men accused by their masters of embezzling money. In Buckinghamshire, for example, the horse dealer Charles Warren charged his servant John Beechey with having embezzled the money he received, namely £20 15s, for the sale of two horses with which he had been entrusted.[90]

While many servants who embezzled money would have been indicted, and therefore not found in my records of summary hearings, there is no reason to believe that this fact would impact the gender ratio of the cases of financial embezzlement that are in my databases. Women workers did not embezzle money with anywhere near the same frequency as their male counterparts, if the charges against them are any indication. We saw in Chapter One that the question of whether female servants even *could* embezzle money wound up before the high court. In 1813, the judge in the case of Elizabeth Smith, the Norfolk housekeeper accused of embezzling £5 entrusted to her by master to pay the overseer of the poor, doubted that 39 Geo. III, c.85 (1799) applied to a woman. The judges determined unanimously that it did.[91] Nevertheless, the fact that the statute had been in effect for over a decade before the question of its gender inclusivity came up suggests that there were not many cases of female servants

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[89] OHC, Trum I/4, Bicester Petty Sessions, May 22, 1847.
[90] CBS, PS/AY/P/3, Aylesbury Petty Sessions Papers and Cases, 1835-1838, December 16, 1837, 135.
[91] *R v. Smith* (1813), Russ. & Ry. 267; 168 Eng. Rep. 795.

embezzling money. Of course, it is possible that other judges faced with such cases simply had not entertained similar hesitations and so the matter had not yet come to the attention of the high court. After all, the judges reviewing Elizabeth Smith's case seemed to decide with little argument or debate that the statute did cover female servants.

Yet in all my sources, only one case of embezzling money involved a woman worker, and that occurred eighty years before the passage of the 1799 Act and a century before the judges' determination in *R v. Smith* (1813). In 1719, William Brockman heard Mrs. Bromer's "complaint of imbezzlement," presumably under the statute 21 H8 c. 7 (1529), against her servant Mary Tournay, who confessed and agreed with her mistress to be discharged upon repaying the money.[92] The paucity of cases involving women, in sources comparatively teeming with accusations of embezzlement against their male counterparts, seems to confirm that not many female servants embezzled their masters' money.

It is unlikely that employers were just more forgiving of female than male servants who embezzled their money, since they prosecuted women for *stealing* it. Money was the second most common item after clothing that female servants stole in the Pre-Sentencing Database, and tied with clothing for the most common item in the Post-Sentencing Database, as Tables 3.1 and 3.2 reveal. Rather, it seems that male and female workers actually resorted to different tactics when it came to appropriating their masters' money – tactics that resulted in different charges at law.

Gendered occupational patterns help to explain why men were more likely to embezzle and women were more likely to steal larcenously. Prior to the late nineteenth century, when women began increasingly to be employed in clerical positions, virtually all workers in the as yet

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[92] BL, MSS Add. 42598, William Brockman, February 13, 1719, p.156.

under-developed white-collar sector were male.[93] Thus, the majority of employees entrusted with the regular handling of their employers' funds, such as bank tellers or clerks, were men. They would have had greater opportunity to embezzle sums in the course of their jobs than would servants whose duties did not include the routine management of money. Many of the male embezzlers in my sources with specified occupations were indeed clerks. James Parry, for instance, who in 1801 embezzled "divers sums" of money on account of his master Robert Lawrence, was clerk in the Lion Inn, a coach-office in Shropshire.[94] In 1802, Thomas Ryder had allegedly "embezzled and made away with the sum of twenty pounds and upwards" by virtue of his employment as clerk for the Snedshill Company – manufacturers of malleable iron in the same county.[95] In 1806, John Taylor, who worked at the Coalport China Manufactory, a porcelain works in Coalbrookdale founded by John Rose, was charged by Rose with having embezzled the money he was employed to distribute to the factory hands.[96]

Women in this period, on the other hand, were more likely to be household servants than white-collar employees in clerical and commercial ventures, and indeed probably constituted three-quarters of all household servants in the country.[97] In this capacity, they had greater occasion to pilfer from their masters' funds than to embezzle them. Though by no means confined, except in the wealthiest homes, exclusively to indoor work, they would nevertheless

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[93] Gregory Anderson, *Victorian Clerks* (Manchester: Manchester University Press, 1976), 2; Gerry Holloway, *Women and Work in Britain Since 1840* (London: Routledge, 2007), 113; Barbara F. Reskin and Patricia A. Roos, eds. *Job Queues, Gender Queues: Explaining Women's Inroads into Male Occupations* (Philadelphia: Temple University Press, 1990), 11-12.
[94] SA, QS/10/2, Calendar of Criminal Prisoners, No. XC, p. 70.
[95] SA, QS/10/2, Calendar of Criminal Prisoners No. XCIV, p. 84; Richard Meade, *The Coal and Iron Industries of the United Kingdom* (London: Crosby Lockwood and Co., 1882), 496.
[96] SA, QS/10/2, Calendar of Criminal Prisoners, No. 5, p. 135; "Coalport Porcelain Factory," *The Grove Encyclopedia of Decorative Arts*, ed. Gordon Campbell (Oxford: Oxford University Press, 2006) http://www.oxfordreference.com.ezproxy.library.yorku.ca/view/10.1093/acref/9780195189483.001.0001/acref-9780195189483-e-0767.
[97] Steedman, *Labours Lost*, 13.

have been familiar with the arrangement of the rooms and the whereabouts of their employers' valuables.[98] Elizabeth Hartland in Gloucestershire, for instance, knew that her mistress Mary Merryman kept her money in a small trunk in the "apple chamber." Armed with this knowledge, she stole out of the trunk two guineas, one half crown, and two shillings in silver before fleeing to Tewkesbury to avoid detection – unsuccessfully, given her prosecution at Quarter Sessions.[99] Shropshire maid Ann Frumston confessed to unlocking a box in her master's bedchamber and helping herself to two guineas – she was obviously aware of the location of both box and key.[100]

Another Ann, Ann Burton, stole £14 that her master Reverend Palmer, the vicar of Tywning in Gloucestershire, had left in his room overnight. In an attempt to exculpate herself, she then led him and his wife on a wild goose chase after a fictitious cunning man in Worcestershire, whom she alleged could help discover the whereabouts of the missing money. According to her, he had been of great assistance to her previous mistress, one Mrs. Fitter, in retrieving a lost velvet hood and other articles. Only once the Palmers had sought out Mrs. Fitter in Droitwich and learned from her that Ann Burton "was an ill person…guilty of several little thefts while she lived with her," and then pressed on to Alvechurch, ostensible home of the cunning man, to find that no such person had ever existed, did Ann finally confess to stealing the money.[101] It is revealing – as well as being a dubious commentary on the state of the clergyman's marriage – that the Reverend, upon finding his £14 was missing, immediately accused both Ann and his own wife Hannah of the theft. In his view, it was clearly equally conceivable that his spouse or his servant had defrauded him, indicating that these two women had similar

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[98] Steedman, *Labours Lost*, 31.
[99] GA, Q/SD/1, Quarter Sessions Informations, 1733 and 1734, 9.
[100] SA, QS/10/1, Calendar of Criminal Prisoners, No. LV, Prisoner 11.
[101] GA, Q/SD/1, Quarter Sessions Informations, 1740, p. 30A- 30D.

opportunities to commit the crime. Female servants obviously had relatively easy access to their employers' inner sanctums.

Of course, male workers also stole their masters' money, and these larcenies made up a larger proportion of the charges against them than financial embezzlement did of the charges against female servants. Notably, many of these male thieves were servants, like their female counterparts. William Hill, for instance, yearly servant of Jonathan Middleton in the Gloucestershire parish of Ashbrooke, stole fifteen shillings and eleven pence farthings from his master's closet while he was out plowing. When he was apprehended, he claimed that a little girl named Mary Gibbs had given him the coins, though he refused to sign his written examination.[102] It is perhaps telling, given the context of this discussion, that Hill attempted to incriminate a female child in a case of money theft.

Occasionally, the alleged culprits were male domestics. In Shropshire, Miss Jane Hill of Weston accused seventeen-year-old John Blackman of stealing money out of her desk after £138 went missing and £38 of it was discovered in his box.[103] Jane seems to have been the middle-aged, unmarried sister of the baronet Sir Rowland Hill, noted for her "pious and excellent advice to her brother…when at school and at college," who bequeathed almost £10,000 to her nephews upon her death in 1852.[104] Blackman was described as a "gentleman's servant" – notably not a coachman or groom, who would have worked in the stables – one of the relatively few male domestics in Victorian England who were concentrated in the great houses of the aristocracy, landed gentry, and wealthy upper echelons of the middle class, and who served as badges of

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[102] GA, Q/SD/1, Quarter Sessions Informations, 1729, 5.
[103] SA, QS/10/3, Calendar of Criminal Prisoners, No. 89, Prisoner 15.
[104] William Courthope, ed., *Debrett's Complete Peerage of the United Kingdom of Great Britain and Ireland*, 22nd ed. (London: J. G. & F. Rivington, 1838), 326-327; Rev. Edwin Sidney, *The Life of the Rev. Rowland Hill, A.M.*, 3rd ed. (London: Baldwi & Cradock, 1835), 8; SA, 821/70, Will of Miss Jane Hill.

superior social status for their employers.[105] As an indoor servant in a well-to-do establishment, Blackman's access to his mistress's private rooms would have been comparable to a maid's. Female domestics were not more criminally inclined than their male counterparts, such as Blackman. Their numbers were simply far greater, and so the larcenous theft of money made a proportionately larger impact on women workers' overall theft statistics than was the case for male workers.

As Table 3.4 showed, 4 men imprisoned for taking their masters' money in the Post-Sentencing Database, or two-thirds of them, had actually stolen it larcenously rather than embezzled it. This proportion was much higher than in the Pre-Sentencing Database, where only 11, or 15%, of the cases of male workers taking their employers' money were instances of larceny (see Table 3.3). The discrepancy between the two shares is due to the fact that there are very few cases of financial embezzlement in the Post-Sentencing Database. While embezzlement accounted for 64 of the total monetary appropriations by workers of either sex in the Pre-Sentencing Database, or 78% them, it only accounted for 2, or 18%, of those in the Post-Sentencing Database. Unsurprisingly, these two cases of monetary embezzlement both involved male perpetrators.

This dearth of cases in the Post-Sentencing Database – composed as it is of house of corrections records – might suggest that workers were not being imprisoned for embezzling their employers' money. However, this is not so. The vast majority of financial embezzlement charges in the Pre-Sentencing Database – 58, or 91% of them – occurred after the passage of 39 Geo. III, c.85 (1799), which made the offence transportable. Nevertheless, only 4, or 6%, of the

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[105] F. M. L. Thompson, *The Rise of Respectable Society: A Social History of Victorian Britain, 1830-1900* (Cambridge: Harvard University Press, 1988), 248; John Tosh, *A Man's Place: Masculinity and the Middle-Class Home in Victorian England* (New Haven: Yale University Press, 2007), 20.

defendants were transported, while 12, or 19% of them, were incarcerated. In a further 27 cases, or 42% of them, the outcome was unknown or inconclusive – servants were summoned or bound to stand trial and then disappeared from the justices' records. Some of these men might have wound up being transported, though it is not unreasonable to assume that others also ended up in houses of correction, meaning that the rate of imprisonment was probably slightly higher than 19%. Workers were indeed being incarcerated for embezzling their masters' money. It is therefore surprising that these offenders were not better represented in the Post-Sentencing Database.

The explanation seems to lie in the regional distribution of the offence and the nature of the sources composing the two datasets. Forty-nine of the cases of financial embezzlement in the Pre-Sentencing Database, or 77% of them, originated in just two counties: Oxfordshire and Shropshire. Even by the mid-nineteenth century, the city of Oxford remained untouched by the Industrial Revolution. Yet it attracted many businesses eager to do custom with the university, especially after the abolition in 1835 of exclusive trading rights by the Municipal Corporations Act. Oxford's economy was rooted in goods and services.[106] Together, these businesses employed large numbers of clerks, tellers, shop boys, and cashiers. Many of them would have had ample opportunities to embezzle money from their masters – and they did. Indeed, Oxfordshire alone fielded 22 of the cases of financial embezzlement in the Pre-Sentencing Database, or 34% of them. Thirteen of the employment grievances heard by the magistrates of the Oxford Police Court between 1837 and 1842, or 15% of them, were accusations that servants

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[106] Eleanor Chance, Christina Colvin, Janet Cooper, C J Day, T G Hassall, Mary Jessup and Nesta Selwyn, "Modern Oxford," *A History of the County of Oxford*, Volume 4: The City of Oxford, ed. Alan Crossley and C R Elrington (London: Victoria County History, 1979), 181-259, accessed October 6, 2015, http://www.british-history.ac.uk/vch/oxon/vol4/pp181-259.

had embezzled money, to take one source from the county as an example. Notably, there are no records from Oxfordshire in the Post-Sentencing Database.

The county of Shropshire, on the other hand, is represented in both datasets. In fact, as we saw in the Introduction, the Shrewsbury House of Corrections calendar was used in both databases, since some of the inmates were awaiting trial, and thus had not been sentenced yet, and others had already been convicted and incarcerated summarily as punishment. All 27 of the Shropshire cases of financial embezzlement in the Pre-Sentencing Database came from this source, yet it only yielded one case in the Post-Sentencing Database – that of fourteen-year-old Thomas Morris, an apprentice who "frequently" stopped on his errands and embezzled the money of his master, the bricklayer John Williams, when sent out to buy anything.[107]

Considering that 10 of the defendants in the Shropshire cases from the Pre-Sentencing Database, or 37% of them, were eventually sentenced to terms of imprisonment, it seems strange at first that there were not more Shropshire embezzlers among the inmates in the Post-Sentencing Database. However, monetary embezzlement – a transportable felony – was not supposed to be tried summarily by magistrates. The justices who committed Morris were technically exceeding their jurisdiction. The vast majority of inmates in the Shrewsbury House of Corrections serving time for embezzling money had been sentenced at Quarter Sessions or Assizes. They would therefore have appeared first in the records as defendants awaiting trial, and so have been entered into the Pre-Sentencing Database, where the eventual outcome of the case was noted. Since there were no repeat entries between the two datasets, those who went on to be imprisoned in the Shrewsbury House of Corrections still did not appear in the Post-Sentencing Database. Thus, financial embezzlers seem to have been severely underrepresented in this dataset by a fluke of

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[107] SA, QS/10/1, Calendar of Prisoners, No. XLV, October 7, 1793, Prisoner 25.

the organization and regional derivation of the dissertation's sources, and not because the offence was treated especially leniently.

Appropriation	Female Workers	Male Workers
Industrial Embezzlement	25 (43%)	56 (24.6%)
Financial Embezzlement	1 (2%)	63 (27.8%)
Theft	32 (55%)	108 (47.6%)
Total	**58**	**227**

Table 3.5 – Appropriations in Pre-Sentencing Database by Gender of Worker
The percentage in parentheses indicates the share of all appropriations by workers of each sex made up by that particular category.

Appropriation	Female Workers	Male Workers
Industrial Embezzlement	17 (55%)	65 (63%)
Financial Embezzlement	0 (0%)	2 (2%)
Theft	14 (45%)	36 (35%)
Total	**31**	**103**

Table 3.6 – Appropriations in Post-Sentencing Database by Gender of Worker
The percentage in parentheses indicates the share of all appropriations by workers of each sex made up by that particular category.

Of course, workers not only embezzled money from their employers, they also embezzled industrial materials. This offence comprised a large share of female servants' total illicit takings in both datasets. Tables 3.5 and 3.6 show that industrial embezzlement accounted for 25, or 43%, of all women workers' appropriations in the Pre-Sentencing Database, and 17, or 55% of them, in the Post-Sentencing Database. There was a greater discrepancy between the two datasets in the proportion of male servants' appropriations made up of embezzled industrial materials. Industrial embezzlement accounted for 65, or 63%, of all male workers' takings in the Post-Sentencing Database, but only 56, or 25% of them, in the Pre-Sentencing Database.

Once again, regional patterns can shed light on this difference. In the Pre-Sentencing Database, the majority of industrial embezzlement cases arose in Wiltshire, Northamptonshire, and Cheshire, all of which boasted significant textile districts. Though the cloth industry in Wiltshire declined steadily in the nineteenth century in the face of mechanized competition from

Yorkshire, it nevertheless remained a noteworthy component of the regional economy in our period. The cloth industry still employed 6,000 people at the end of the 1830s, half of them in mills.[108] While Northamptonshire was historically known more for its manufacture of boots and shoes, there was occupation for a "large number of hands" in silk plush weaving in the environs of Kettering.[109] Outside of this centre, there was also a rural worsted industry in Northamptonshire that has recently been the subject of a doctoral dissertation. In Guilsborough hundred, where the magistrate Sir Thomas Ward presided, 27.3% of the adult male population worked in textiles – the majority as weavers, and a minority as combers.[110] The JP Thomas Allen, whose notebook provides the Cheshire evidence, was a borough justice in Macclesfield, where the silk-weaving industry was dominant.[111]

Occupation	Female Servants	Male Servants
Textile Worker	23 (92%)	46 (82%)
Metal Worker	0 (0%)	1 (2%)
Tradesperson	1 (4%)	3 (5%)
Other	1 (4%)	1 (2%)
Unknown	0 (0%)	5 (9%)
Total	**25**	**56**

Table 3.7 – Occupations of Industrial Embezzlers by Gender in Pre-Sentencing Database
The percentage given in parentheses is the share of all industrial embezzlers of that sex represented by each occupational category.

Given the economic make-up of these counties, it is not surprising that the vast majority of industrial embezzlers in the Pre-Sentencing Database – 71, or 85% – were textile workers, as

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[108] "Economic history," *A History of the County of Wiltshire,* Volume 4, ed. Elizabeth Crittall (London: Victoria County History, 1959), 1-6. *British History Online*, accessed July 31, 2017, http://www.british-history.ac.uk/vch/wilts/vol4/pp1-6.
[109] William Whellan and Co., *History, Gazetteer, and Directory of Northamptonshire; Comprising a General Survey of the County, and a History of the Diocese of Peterborough: With Separate Historical, Statistical, and Topographical Descriptions of All the Towns, Parishes, Townships, Hundreds, and Manors* (London: Whittaker and Co, 1849), 80-85.
[110] Wendy Raybould, *Open for Business: Textile Manufacture in Northamptonshire, c.1685-1800* (PhD Dissertation, University of Leicester, 2005), 111, 115.
[111] Hay, "England," 98.

Table 3.7 shows.[112] Many of them were women, such as Northamptonshire spinner Elizabeth Taylor, who was taken up on a warrant for reeling short yarn.[113] This stands to reason, since we saw in the Introduction that women were heavily involved in all of the major manufacturing branches of the textile industries.[114] The connections between female workers and embezzlement will be explored at greater length in the discussion of textile workers in Chapter Five. For now it is worth noting simply that industrial embezzlement formed a smaller share of male workers' appropriations in the Pre-Sentencing Database because the majority of embezzlement cases came from areas of textile manufacture, where the offence and its prosecution, as we shall see, tended to be feminized.

The picture shifts when we turn to the Post-Sentencing Database, in which industrial embezzlement comprised a majority of the illicit takings of both male and female workers. The main counties from which embezzlement cases originated in this dataset were Staffordshire, Shropshire, and Gloucestershire. Indeed, 62 of the male embezzlers in the Post-Sentencing Database, or 95% of them, were imprisoned in the houses of correction in Stafford, Shrewsbury, and Littledean. Staffordshire and Shropshire were both early developers in the industrialization of England. Shropshire in the eighteenth century was a leader in the production and use of iron, as well as brickworks, potteries, and glass and chemical works. Staffordshire, rich in iron and coal deposits and generations of skilled metalworkers, enjoyed extensive expansion in heavy industry into the first decades of the nineteenth century.[115] Littledean, in the Forest of Dean, was

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[112] Three workers of unknown gender also embezzled industrial material in the Pre-Sentencing Database, and two of these were textile workers.
[113] WCRO, CR162/688, Sir Thomas Ward, January 13, 1772.
[114] Berg, "Women's Work, Mechanization," 68-69.
[115] Berg, *Age of Manufactures,* 126; Phillips and Phillips, eds, *An Historical Atlas of Staffordshire*.

a centre of iron works and metal trades by the mid-13th century, and by the later eighteenth century many of its poorer inhabitants still relied on mining and nail making for a living.[116]

Occupation	Female Servant	Male Servant
Textile Worker	2 (12%)	7 (11%)
Metal Worker	1 (6%)	20 (31%)
Tradesperson	0 (0%)	13 (20%)
Labourer	6 (35%)	16 (25%)
Housework	7 (41%)	0 (0%)
Apprentice	0 (0%)	3 (5%)
Other	1 (6%)	2 (3%)
Unknown	0 (0%)	4 (6%)
Total	**17**	**65**

Table 3.8 – Occupations of Industrial Embezzlers by Gender in Post-Sentencing Database
The percentage given in parentheses is the share of all industrial embezzlers of that sex represented by each occupational category.

It is in keeping with the economic make-up of these areas that 21 of the embezzlers in the Post-Sentencing Database, or 26% of them (including 20 of the men specifically, or 31% of them, as Table 3.8 shows) definitely worked in metal trades. Joseph Hale, for instance, was a forty-five year old Shropshire nail-maker serving a three-month sentence for embezzling "sixty pounds weight of rod iron." He had been committed by the magistrates Thomas Wight and Walter Woodcock, who together were responsible for incarcerating many of the nail-workers listed in the Shropshire house of correction records.[117] Woodcock was a resident of Halesowen. Since the parish's principal industry was indeed the manufacture of nails, it is not surprising that he dealt with many employment conflicts involving nail-makers.[118] Many of the 16 men

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[116] A. P. Baggs and A. R. J. Jurica, "Littledean," *A History of the County of Gloucester,* Volume 5: Bledisloe Hundred, St. Briavels Hundred, The Forest of Dean (1996): 159-173. http://www.british-history.ac.uk/report.aspx?compid=23258. Accessed November 10, 2014.
[117] SA, QS/10/1, Calendar of Prisoners, Prisoners in the House of Correction for Shropshire, July 11, 1786, Prisoner 18, p.3.
[118] *Collections for a History of Staffordshire*, ed. The William Salt Archaeological Society, Vol. 9 (London: Harrison and Sons, 1888), 143; "Halesowen: Introduction, borough and manors," *A History of*

ambiguously categorized as 'labourers' in the Littledean house of correction, who accounted for a quarter of all male embezzlers as Table 3.8 reveals, were likely also employed in metal-work, given the economic profile of that part of Gloucestershire.

A further 13 of the embezzlers in the Post-Sentencing Database, or16% of them, were employed in trades and handicrafts. With the exception of two hatters, these were all shoemakers, who had embezzled leather and other shoe materials entrusted to them. These shoemakers – such as seventeen-year-old William Foster, whose behaviour was "very good" during his month of imprisonment – all came from the borough of Stafford, a centre of boot and shoe manufacture in the eighteenth and nineteenth centuries.[119]

As Table 3.8 shows, all of the embezzlers definitely employed in the metal or handicrafts trades were men except for Ann Hadley, a nail-maker from Halesowen incarcerated for three months by Walter Woodcock for appropriating rod iron.[120] It is possible that the female "labourers" imprisoned for embezzlement in Littledean were also nail-makers, but there is no proof that they were. English women did work in "limited sections" of the leather industries and "certain sectors" of the metal trades, notably nail making, as Berg has shown.[121] However, they did not dominate these manufactures the way they did the branches of the textile industry. The metal and leather trades were far more 'masculinized.' Thus, embezzlement figures more prominently among the appropriations of male workers in areas where these industries held sway than in it does in those regions where the textile industries did.

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the County of Worcester, Vol. 3 (London: Victoria County History, 1913), 136-146, accessed September 1, 2015, http://www.british-history.ac.uk/vch/worcs/vol3/pp136-146.

[119] SRO, D(W)/1723/1, Register for House of Correction, Prisoner 504, 1800; Joan Anslow and Thea Randall, *Around Stafford From Old Photographs* (Stroud, Gloucestershire: Amberley Publishing, 2009), 1.

[120] SA, QS/10/1, Calendar of Prisoners, Prisoners in the House of Correction for Shropshire, July 11, 1787.

[121] Berg, "Women's Work, Mechanization," 69.

It is clear that the sexual division of labour helps to explain the gendered pattern of servants' appropriations. Walker, MacKay, and Gray have all contended that the types of property crimes committed by men and women in both the seventeenth and eighteenth centuries were influenced by the sorts of activities in which each sex engaged, the milieus in which they spent most of their time, the materials which they handled most often, and the exchange networks in which they participated.[122] My analysis of workers' takings corroborates these arguments. Servants of both sexes were most likely to steal those items that the conditions of their employment made most readily available to them – for instance, women stole clothing, and men stole grain for the horses. Outworkers of both sexes embezzled the materials with which they were entrusted, but for women these were more likely to be textiles and for men, metals and leather. Occupational patterns also helped determine the means by which servants illicitly acquired their masters' goods. Female servants stole money, for example, while male servants embezzled it. Gender, influencing as it did the sorts of employment available to men and women, clearly played an important role in shaping workers' appropriations.

Gendered Patterns of Punishment

Not only did gender help shape the pattern of workers' takings, it also affected the outcomes of prosecutions brought against them. Frustratingly for the historian, twelve of the appropriations cases involving female servants in the Pre-Sentencing Database, or 48% of them, and 40, or 41%, of those involving male servants, had no documented conclusions. Summons or warrants were issued, hearings were adjourned, suspects were remanded or bound to appear for further examination or trial, and then the cases disappeared from the records, though they might

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[122] Walker, *Crime, Gender, and Social Order*, 162-170; MacKay, "Why Women Stole," 623, 629-631; Gray*, Crime, Prosecution*, 75-76.

have been found in the indictment files of Quarter Sessions and Assizes, which I did not consult. However, the known outcomes in the remaining prosecutions can shed light on the ways in which gender influenced sentencing.

Outcome	Female Servants	Male Servants
Agreed	0 (0%)	2 (2%)
Acquitted	1 (4%)	6 (6%)
Adjourned	0 (0%)	2 (2%)
Bound for Trial	3 (12%)	17 (17.5%)
Case Dismissed or No Bill	2 (8%)	2 (2%)
Convicted	0 (0%)	1 (1%)
Discharged (With or Without Abated Wages)	0 (0%)	5 (5%)
Financial Penalty	0 (0%)	10 (10%)
House of Correction	5 (20%)	25 (26%)
Reprimand from Magistrate	2 (8%)	2 (2%)
Returned to Work	0 (0%)	1 (1%)
Summons or Warrant Issued	5 (20%)	6 (6%)
Transportation	1 (4%)	2 (2%)
Other	2 (8%)	1 (1%)
Not Recorded	4 (16%)	15 (15%)
Total	**25**	**97**

Table 3.9 – Outcomes by Gender of All Larceny Cases Excluding the Theft of Money in the Pre-Sentencing Database

Outcome	Female Servants	Male Servants
Agreed	0 (0%)	4 (7%)
Acquitted	0 (0%)	1 (2%)
Adjourned	1 (4%)	1 (2%)
Case Dismissed or No Bill	3 (12%)	2 (4%)
Convicted	2 (8%)	0 (0%)
Financial Penalty	4 (16%)	2 (4%)
House of Correction	3 (12%)	8 (14%)
Return to Work (With or Without Abated Wages)	1 (4%)	5 (9%)
Summons or Warrant Issued	11 (44%)	32 (57%)
Not Recorded	0 (0%)	1 (2%)
Total	**25**	**56**

Table 3.10 – Outcomes by Gender of All Cases of Industrial Embezzlement in the Pre-Sentencing Database

	Money Theft		Money Embezzlement	
Outcome	**Female**	**Male**	**Female**	**Male**
Agreed	0 (0%)	0 (0%)	0 (0%)	1 (1.5%)
Acquitted	1 (14%)	0 (0%)	0 (0%)	8 (13%)
Adjourned	0 (0%)	2 (18%)	0 (0%)	2 (3%)
Bound for Trial	1 (14%)	3 (27%)	0 (0%)	17 (27%)
Case Dismissed or No Bill	0 (0%)	0 (0%)	0 (0%)	8 (13%)
Discharged from Work	0 (0%)	0 (0%)	1 (100%)	0 (0%)
Financial Penalty	0 (0%)	0 (0%)	0 (0%)	1 (1.5%)
House of Correction	0 (0%)	2 (18%)	0 (0%)	12 (19%)
Reprimand from Magistrate	0 (0%)	0 (0%)	0 (0%)	2 (3%)
Returned to work (Abated wages)	1 (14%)	0 (0%)	0 (0%)	0 (0%)
Summons or Warrant Issued	1 (14%)	0 (0%)	0 (0%)	4 (6%)
Transportation	1 (14%)	0 (0%)	0 (0%)	4 (6%)
Not Recorded	2 (29%)	4 (36%)	0 (0%)	4 (6%)
Total	**7**	**11**	**1**	**63**

Table 3.11 – Outcomes by Gender of All Cases of Monetary Embezzlement and Monetary Larceny in the Pre-Sentencing Database

Overall, it seems that female servants who stole or embezzled their employers' goods were treated slightly more leniently than their male counterparts. Tables 3.9, 3.10, and 3.11 reveal that except in cases of financial embezzlement, women workers were proportionately more likely than men to have the case against them dismissed by a magistrate or a grand jury. In cases of larceny, a larger share of female than male servants was also let off by the presiding justice with only a reprimand. This confirms Drew Gray's finding that women in the London summary courts were more frequently chastised and released than were men.[123]

One incident in particular illustrates the gender bias that could sway magistrates in their sentencing. At the Cheltenham petty sessions in 1834, Walter Buckle charged his workers Thomas Sadler, Sarah James, and Caroline Sadler with stealing wheat they were supposed to be reaping for him. The magistrates present, gentleman John Blagdon and physician Thomas Newell, ordered Thomas Sadler to pay a fine and the costs of the proceedings, but let the two

[123] Gray, *Crime, Prosecution*, 88.

women off with a reprimand. There is no evidence that Thomas was guiltier than the other defendants. In fact, in his testimony Buckle specifically mentioned seeing Caroline cutting some ears of corn in the field.[124] Blagdon and Newell must have been lenient toward Sarah and Caroline either because they believed that Thomas, as the man, was the ringleader and instigator of the theft and thus deserved a harsher penalty, or because they were inclined to be more merciful toward female offenders on principle. A cursory review of the rulings of Blagdon and Newell shows that, based on imprisonment rates, they tended to be very slightly more severe on male defendants than the Cheltenham magistrates in general.

While female servants who appropriated their employers' goods were treated overall with somewhat greater leniency than male servants, they nevertheless were also transported for their offences proportionately more often than their male counterparts. Transportation was the most severe sentence that any workers in my sources received, since none of them was executed. Table 3.9 shows that one woman and two men, representing 4% and 2% respectively of all thieves of each sex, were transported for larcenously stealing items other than money.

These goods corresponded to the gendered theft patterns discussed earlier. One of the male transports, a journeyman plumber in Chertsey, had stolen his employer's lead.[125] The other, Kentish labourer Isaac Champion, had stolen a sack and two bushels of beans from his master, John Kingsworth.[126] This seems like a relatively petty appropriation to merit transportation. However, as we have seen, the theft of grain was perceived to be pressing problem in Kent and Champion had a previous conviction for the same offence. The justices of the Canterbury

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[124] GA, PS/CH/M1/1, Cheltenham Petty Sessions, August 7, 1834; "Parishes: Boddington," *A History of the County of Gloucester*, Volume 8, ed. C R Elrington (London: Victoria County History, 1968), 188-196, accessed June 22, 2015, http://www.british-history.ac.uk/vch/glos/vol8/pp188-196; Blacker, ed. *Gloucestershire Notes and Queries*, Vol. 3 (1887), 614.
[125] *Deposition Book of Richard Wyatt,*19-20.
[126] KHLC, U951/O6, Sir Edward Knatchbull, July 13, 1830.

Quarter Sessions probably felt that they were making an example of him, while simultaneously ridding the county of a recidivist. On the other hand, these magistrates also sentenced two farmer's servants to seven years' transportation for stealing oats for their horses from another farmer's barn, despite the fact that it was their first offence – as Montague Pennington noted in explaining why he had voted in the minority against the sentence.[127] Moreover, when a man named Thomas Mott was convicted of stealing fowls and similarly sentenced on another occasion, he addressed this warning to the justices before being removed from the court: "Gentlemen, you are very fond of transporting people, now I would have you take care of yourselves for there are more of us than you."[128] Though Pennington described Mott's character as "very notoriously bad," it seems that the Canterbury magistrates might have had a reputation for being overly ready to resort to transportation.

Indeed, it was the Canterbury JPs who sentenced the lone female transport in Table 3.9 – an unnamed maid who had stolen her mistress's clothing.[129] As we have seen, this was a typical item for female servants to steal. However, the circumstances of the woman's transportation were somewhat atypical. Her mistress was Miss Knatchbull, daughter of Sir Edward, the ninth baronet Knatchbull, a wealthy and prominent Kentish landowner and justice of the peace who had six months earlier in a unanimous vote succeeded his father as the Chair of Canterbury Quarter Sessions.[130] The ethics of Knatchbull being involved in trying a case pertaining to his own family and possibly using his considerable influence in the county and on the magisterial bench to secure such a harsh punishment seem dubious at best – especially considering that in

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[127] KHLC, U2639/O1, Montagu Pennington, July 10, 1810, p. 19.
[128] KHLC, U2639/O1, Montagu Pennington, April 10, 1812, p. 47.
[129] KHLC, U2639/O1, Montagu Pennington, October 22, 1819, p. 134
[130] KHLC, U2639/O1, Montagu Pennington, January 12, 1819, p. 128; April 23, 1819, p. 131; Melling, "County Administration," 253-254.

another Quarter Sessions case over which he presided, a servant who had stolen her mistress's petticoat and slip was sentenced to two months' hard labour in the house of correction – a much more moderate penalty for a very similar crime.[131]

Though the numbers involved are very small, female servants were also transported proportionately more often than their male counterparts for monetary appropriations, as Table 3.11 reveals. Notably, these convicts conformed to the previously discussed pattern of women stealing money and men embezzling it. Four men, accounting for 6% of all male financial embezzlers, were transported for this offence in my sources. Richard Beacall, the "Governor or Steward to the Directors of the United Parishes within the liberties of Shrewsbury," had, by virtue of his employment, fraudulently embezzled "certain sums." So had George Wellings, who was Clerk to the Directors. They were each transported for 14 years.[132] The eighteen-year-old printer Edward Palmer had also embezzled money from his employer, though he was only transported for 7 years.[133] William Davies, a twenty-two year old labourer from Shrewsbury, was transported for seven years as well, for embezzling two pounds and three shillings from his master James Barnbrook.[134]

Though only one woman was transported for stealing money, she nevertheless represented 14% of all female money thieves. Mary South, servant of the Hackney victualler Edward Batty, had stolen 33 guineas in gold and £5 in silver and other property out of the chest of drawers in her master's bedroom.[135] South was probably lucky to be sentenced to transportation instead of being hanged. Ruth Paley points out that her conviction actually

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[131] KHLC, U951/O6, Sir Edward Knatchbull, January 1, 1834.
[132] SA, QS/10/3, Calendar of Criminal Prisoners, Shropshire Summer Assizes 1824, Prisoners 23 and 24.
[133] SA, QS/10/3, Calendar of Criminal Prisoners, Shropshire Summer Assizes 1817, Prisoner 25.
[134] SA, QS/10/3, Calendar of Criminal Prisoners, Shropshire Summer Assizes 1830, Prisoner 40.
[135] *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book*, ed. Ruth Paley (London: London Record Society, 1991), 16, 103.

involved "pious perjury" on the part of the jury, who found her guilty of larceny to the value of 39 shillings in order to save her from the capital crime of theft from a dwelling house of over 40 shillings.[136]

In addition to being transported proportionately more frequently for their property offences than male servants, female servants also made up a larger share of transported convicts than they did of defendants in general or of accused appropriators. While they accounted for 307 defendants overall, or 18% of them, and 58 thieves and embezzlers, or 21% of them, they represented 25% of all transported workers in the Pre-Sentencing Database – though, this share was made up of only two women. The 25% figure is somewhat out of line with more general statistics on the gender of transported felons. Women made up approximately 15% of all convicts transported from the British Isles between 1661 and 1870.[137] They accounted for a sixth of all transports to Australia between 1788 and 1852.[138] They also made up between 17% and 20% of transported convicts in the American colonies between 1718 and 1775.[139] Perhaps the case of Knatchbull's unnamed maid should be discounted as a fluke – the result of the Chair of Quarter Sessions' partiality. If her conviction is excluded, female servants – in the form of one woman, Mary South – then constitute 14% of all workers sentenced to transportation in my sources.

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[136] Ruth Paley, introduction to *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book*, ed. Ruth Paley (London: London Record Society, 1991), xix.
[137] Hamish Maxwell-Stewart, "Convict Transportation from Britain and Ireland, 1615-1870," *History Compass* 8/11 (2010): 1226.
[138] Michael Sturma, "Eye of the Beholder: The Stereotype of Women Convicts, 1788-1852," *Labour History* 34 (1978): 3.
[139] A. Roger Ekirch, "Bound for America: A Profile of British Convicts Transported to the Colonies, 1718-1775," *The William and Mary Quarterly* 42 (1985): 194.

On the other hand, women might well have represented a quarter of all servants transported for stealing specifically from their masters. After all, the "vast majority" of women who were transported were domestic servants, contrary to older notions that female convicts were depraved, incorrigible prostitutes.[140] Furthermore, these domestics were "almost invariably convicted of theft." Michael Sturma observes that they had ample opportunity to steal and were obvious suspects when an employer's property went missing.[141] Beattie also remarks that they were well acquainted with the contents of the house and with family members' movements.[142] The nature of their work therefore suggests that most female transports had stolen from their masters. While the preponderance of male transports were also larcenists, they were drawn from a wider occupational background than their female counterparts – their employments ranging from chimney sweeps to tradesmen to attorneys.[143] It is likely that a smaller proportion of these felons had stolen their masters' belongings, since they had greater access to a range of goods outside the confines of their employers' homes, unlike domestic servants. A Middle Temple barrister, for instance, was sentenced to seven years' transportation for smuggling rare books out of the library at Trinity College, Cambridge.[144] The evidence from my sources seems to show that women did form a larger share of transport convicts who had stolen from their employers, though admittedly the numbers involved are very small.

While female servants were transported proportionately more often than male servants, they were imprisoned proportionately less often, as Tables 3.9, 3.10, and 3.11 show. This tallies with Gray's finding for eighteenth-century London that men were incarcerated more often than

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[140] Oxley, *Convict Maids,*166; Sturma, "Eye of the Beholder," 3.
[141] Sturma, "Eye of the Beholder," 4.
[142] Beattie, "Criminality of Women," 92.
[143] Ekirch, "Bound for America," 190, 196.
[144] Ekirch, "Bound for America,"196.

women for summary offences.[145] Both male and female workers in the Pre-Sentencing Database were incarcerated most frequently for larcenies of goods other than money – the former in 25 cases, or 26% of them, and the latter in 5, or 20% of them, as Table 3.9 revealed.

The difference between the two shares cannot be attributed to the seriousness of the offences, as demonstrated by some examples drawn from the Kent sources, which together accounted for 21 of the incarcerations for larceny in the Pre-Sentencing Database, or 68% of them. In 1829, Montague Pennington and two other magistrates sitting in petty sessions sentenced one man to a month of hard labour for stealing his mistress's onions – hardly the weightiest transgression.[146] In fact, stealing vegetables was one of the few thefts that could be tried summarily. Under 7 & 8 Geo. 4 c. 29 s. 42 (1827), the offender could either be imprisoned or fined.[147] Pennington and his fellow JPs arguably chose the harsher penalty. Sitting either as a single justice or in petty sessions, and occasionally in Quarter Sessions, Pennington was responsible for 11 committals of male servants to the house of correction for theft (excluding embezzlement) in the Pre-Sentencing Database, or 41% of them. By contrast, he did not imprison any female servants for larceny in his three decades on the bench, though he did hear cases involving women who stole.

Men and women charged with very similar property crimes could receive starkly different treatment from Pennington. When Ann Shelby's master Mr. Taylor accused her of stealing £5 from his pocket, Pennington persuaded him not to prosecute her despite her guilt because she was "very penitent." Though Pennington was prepared to allow her discharge without wages, which added up more or less to the amount she had spent of the stolen £5, he

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[145] Gray, *Crime, Prosecution*, 88.
[146] KHLC, U2639/O1, Montagu Pennington, July 6, 1829, p. 189.
[147] Burn, *Justice of the Peace*, new ed., Vol. 3 (1836), 454.

recommended that instead Taylor keep her "a little longer for her sake, and to give her a little trial." He noted that her mistress did indeed let her stay out the quarter.[148] Yet three years earlier, at his first Quarter Sessions after being sworn into the commission, Pennington was among those who sentenced William Kidney to two months' imprisonment for finding and keeping his master's pocket book, and spending the notes, totalling £7, inside it.[149] It is true that Pennington was not the justice who had bound Kidney for trial. He might have dealt with this theft summarily in the same way he did Ann Shelby's had Kidney's master approached him initially. However, he also did not record any opposition to the verdict, which he usually did when he disagreed with one. We have already seen, for instance, that he objected to the transportation of the two farm servants for stealing oats because it was their first offence.

Of course, Kidney may not have been as repentant as Shelby. Pennington was very influenced by the perceived moral character of defendants. He was moved to lenience by displays of contrition from guilty parties of both sexes. When Alexander Dun ran away from his master and went to sea, he returned, acknowledged his fault, and was very sorry, so Pennington ordered him back to his service and abated his wages rather than imprison him.[150] On another occasion, Pennington had committed the waggoner's mate Edward Holmes to the house of correction for a month for stealing corn for the horses and subsequently behaving insolently and refusing to apologize. However, he ordered Holmes to be released a week later when he

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[148] KHLC, U2639/O1, Montagu Pennington, July 1st, 1812, p. 51. Pennington also noted that Ann Shelby married William Birch, who went on to be charged with theft from his own master. He was employed as a thresher, and he stole wheat. After being examined twice he confessed and his master forgave him on condition of his returning the wheat and quitting the premises quietly. March 24, 1814, p. 79.
[149] KHLC, U2639/O1, Montagu Pennington, January 11, 1809, p. 2.
[150] KHLC, U2639/O1, Montagu Pennington, January 1st, 1910, p. 9.

promised to beg pardon and to behave better.[151] Though Pennington's clemency was clearly not limited to female servants, it is still telling that he did not imprison any women workers for theft, while incarcerating their male counterparts for larceny in 11 cases, or 39% of them.

Turning to the Quarter Sessions records of Pennington's colleague, Sir Edward Knatchbull – the same Quarter Sessions chairman who sentenced his daughter's maid to transportation – we see the difference in the treatment of male and female thieves highlighted in a single case. James Garlinge and the cook Sarah Garlinge had together stolen twenty pounds of pork from her master's cellar. She was committed to the house of correction for six months with hard labour – scarcely an indulgent punishment. However, James's sentence was twice as long.[152] It is not clear whether James and Sarah were spouses or relatives. If they were married, it is noteworthy that Sarah was imprisoned at all. The legal fiction of the *feme covert* ordinarily ascribed all legal liability to the husband for the crimes of the wife committed in his presence. The Quarter Sessions justices must have believed that Sarah had played an especially active part in the theft and acted on her own initiative for them to assign her responsibility. Nevertheless, her incarceration was half the length of James's, which certainly implies that her gender was a mitigating factor in her sentencing. On the other hand, if James was not her husband, it is

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[151] KHLC, U2639/O1, Montagu Pennington, February 28, 1815, p. 95. By the same token, he had little patience for impenitent offenders. He sentenced the "insolent" waggoner James Langwell to twenty-eight days of correction and ordered him to bear his own expenses for assaulting and abusing his master "in the most outrageous manner" and refusing to do his work, all of which he freely acknowledged. KHLC, U2639/O1, Montagu Pennington, January 31, 1814, p. 78. Nor was his exasperation limited to servants. When the farmer Matthew Brown dragged his feet over paying three men for cutting hay and then became "very insolent," Pennington threatened to commit him. KHLC, U2639/O1, Montagu Pennington, July 23, 1817, p. 118. Pennington would not stand for impertinence from masters even in cases where the servant was partly at fault. The lad William Dawkins complained that William Prescot had not paid him his wages. The boy had behaved badly, so Pennington fined him 10s for the Canterbury Hospital by his master's desire, and then awarded him the remainder of his earnings in full. The case had first gone before the magistrate Mr. Stringer, who had declined to proceed in it. Prescot ridiculed Stringer for his refusal, so Pennington sent him a summons, which "settled him much." October 12, 1811, p. 39.

[152] KHLC, U951/O5, Sir Edward Knatchbull, January 14, 1822.

possible that the magistrates determined that she was less to blame than her co-conspirator and her punishment simply reflected that fact – though such a determination was probably equally influenced by her gender.

Although female servants were imprisoned proportionately less often than male servants for all property crimes, it is worth noting that they were incarcerated more often for larceny than they were for employment offences in general. They were sent to the house of correction in 3 cases of industrial embezzlement, or 12% of them, as Table 3.10 showed, which is the same rate at which they were imprisoned for master and servant transgressions overall. However, they were incarcerated for larcenies of goods other than money in 5 cases, or 20% them. Male servants were also imprisoned at a higher rate for non-monetary thefts than they were for employment offences generally. They were incarcerated in 25 cases of larceny, or 26% of them, compared to 253 employment disputes overall, or 19% of them. On the other hand, male workers were only imprisoned for industrial embezzlement in 8 cases, or 14% of them. They were underrepresented as prisoners in embezzlement cases compared to their shares as prisoners in total master and servant cases. Therefore, relative to their general treatment, female embezzlers were sentenced more harshly than their male counterparts.

Moreover, once convicted and committed to the house of correction, female thieves and embezzlers were afforded less lenience than both female defendants in general and than male appropriators, as figures from the Post-Sentencing Database indicate. While only 52 female servants imprisoned in the sources for this dataset (excluding the registers of Northleach and Littledean, for which I could not compile data about sentence lengths), or 25% of them, were committed for longer than one month, 12 women who stole or embezzled, or 67% of them, were committed for terms longer than a month. By comparison, men were incarcerated for longer than

one month in 298 cases, or 26% of them. Male thieves and embezzlers were imprisoned for longer than one month in 50 cases, or 62% of them. Female appropriators were also proportionately less likely to be released before the completion of their term than female inmates overall, and than male appropriators. In general, women were released early in 33 instances in the Post-Sentencing Database (excluding those cases in the Northleach and Littledean registers), or 16% of cases. However, only 1 female appropriator, representing 6% of female thieves and embezzlers, was released early. By contrast, 14 male appropriators, or 17% of them, were granted early release.

Conclusion

Although legally distinct from master and servant offences, the theft and embezzlement of employers' goods by workers should be considered alongside other grievances arising from the employment relationship. In practice, the lines between these crimes were often blurred. Magistrates and masters themselves did not always clearly distinguish between appropriations and other types of misbehaviour by servants. Like infractions such as abandoning service, neglecting work, or refusing to perform a contract, embezzlement and theft existed on a continuum of transgressive behaviours that was expressed, defined, and negotiated in justices' parlours and petty sessions meetings.

Gender played an important role in shaping patterns of workers' thefts and punishments. For instance, the theft of grain was an almost exclusively masculine transgression because female servants tended not to work with draught animals on farms. Therefore, they lacked the incentive of their male counterparts to steal additional fodder for horses in their care. Instead, larcenous female servants most commonly targeted clothing. Men and women alike had

incentive to steal their employers' clothes because they were highly sought-after and easy to dispose of on the second-hand market. However, female servants had the additional inducement of wanting to be fashionably dressed. Stylish clothes were an important investment for these women both financially and existentially. They represented accumulated capital, an enticement to prospective husbands, and, significantly, an opportunity to carve out a desirable, class-transcending identity as young, modern women. For these reasons, it was more important for female than male servants to possess nice clothing. Sometimes, the quickest and simplest means of doing so was to take the garments they saw on constant display around them as they worked.

Gender influenced not only the types of goods that male and female workers took, but also the methods by which they acquired them and the legal categories into which their appropriations fell. Men and women used different tactics to take their masters' money. The sexual division of labour in the eighteenth and early nineteenth century, which reserved emerging white collar employment for men, meant that male workers were more likely to embezzle the funds with which they were entrusted in their capacities as clerks and tellers. Female servants, on the other hand, with relatively easy access to their masters' inner sanctums, were more likely to steal money larcenously in the course of their household duties.

Gender also shaped the pattern of punishment of thieves and embezzlers. In general, magistrates tended to treat female appropriators more leniently than their male counterparts. For instance, women were more likely to have the case against them dismissed, or to be let off with a reprimand by the presiding JP. Proportionately more male servants than female servants were imprisoned for their thefts and embezzlements. However, female workers were treated more harshly for these crimes than they were for employment offences generally. They were incarcerated at a higher rate for illicit appropriations than they were for master and servant

infractions overall. Furthermore, they were more likely to be sentenced to terms longer than a month in the house of correction, and less likely to be released early once imprisoned, than women workers were overall and than male thieves and embezzlers were. Female servants were also transported for stealing proportionately more frequently than male servants. It seems that women who stole and embezzled were accorded more clemency than men, unless their appropriations were deemed serious enough to merit the harshest penalties, in which case they were granted less lenience. They were also dealt with more severely than the average female defendant in an employment dispute.

As we have seen, Valenze referred to industrial embezzlement and domestic theft as "source[s] of suspicion and anxiety aimed at women."[153] These offences did form a larger share of female servants' total transgressions than they did of male servants' total transgressions. Moreover, female servants were overrepresented as defendants in these types of crimes compared to their shares as defendants in employment disputes in general. In this sense, they are 'feminized' infractions. From one 'feminized' complaint, we turn in the following chapter to another – assault. While female servants were overrepresented as defendants in cases of appropriation, they were overrepresented as plaintiffs in cases of assault.

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[153] Valenze, *First Industrial Woman*, 27.

Chapter Four: Assault and Violence in Master and Servant Relationships

In November of 1834, Sarah Smith called her servant Margaret Webb into the kitchen. She proceeded to strike Webb in the eyes, tear off her cap, and break the comb on her head. Webb charged her mistress with assault at the Cheltenham petty sessions. The presiding justices were Major Thomas Josephus Baines, who was "one of the stipendiary magistrates" appointed for the borough; and Robert Bransby Cooper, one of the three JPs successfully sued for false imprisonment five months earlier by a carpenter he and his colleagues had incarcerated for failure to pay wages (see Chapter Two). At the hearing, Webb's witness Ann Mellett confirmed that Smith "struck her several blows…[with] no provocation." Baines and Cooper fined Smith 15 shillings and the costs of the proceeding.[1]

This case typifies some common aspects of master and servant assaults. The assailant was the employer, not the worker, as was true in the vast majority of assaults in the dissertation's databases. Moreover, Smith's attack on Webb was quite fierce. As Richard Burn explained in his handbook for magistrates, assault was defined as an "attempt or offer, with force and violence, to do a corporal hurt to another; as by striking at him with or without a weapon; or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within the reach of it; or by holding up one's fist at him; or by any other such like act, done in an angry, threatning [sic] manner."[2] While assault therefore technically covered a fairly wide gamut of offensive behaviour, including menacing overtures, the assaults with which servants charged their employers tended to go beyond threats to real violence. In a society that long tolerated the use of 'moderate' physical force when disciplining workers, servants who complained about

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[1] GA, PS/CH/M1/1, Cheltenham Petty Sessions, November 15, 1834; Sylvanus Urabanus, "Obituary," *The Gentleman's Magazine,* Vol. 14 (London: William Pickering; John Bowyer Nichols and Son, 1840), 333; *Wiles v. Cooper* (1834), 3 Ad. & E. 524, 111 Eng. Rep. 513.
[2] Burn, *Justice of the Peace,* 4th ed., Vol. 1 (1757), 92.

masters pointing pitchforks or shaking fists at them would not be likely to garner much sympathy. Notably, Webb stressed in her grievance that Smith's assault on her was unprovoked. Employers and magistrates alike were often ready enough to believe that servants deserved the abuse they received.

Finally, both the plaintiff and the defendant in the Cheltenham case were women. Mistresses and female servants alike were overrepresented in assault cases, as the accused and the accusers respectively, compared to their shares in employment disputes overall. Assault charges also made up a proportionately greater share of female servants' complaints than they did of male servants' grievances. This chapter will explore the gendered dimensions of master and servant assaults and contend that women workers did have a higher chance than men of being assaulted by their employers, or at least of reporting and prosecuting their abuse.

"In Nature of Correction Only": The Limits of 'Acceptable' Assault

When Mr. Woodward in Kent approached Montague Pennington about his two servant boys stealing eggs and bacon, Pennington gave the lads a "severe reprimand" and told Woodward "he might horsewhip them if they behaved ill again." Woodward must have taken Pennington up on his suggestion, since the JP noted that one of the two boys afterwards complained of being "beat…about the head" by his master.[3] It is not clear if Pennington was recording a formal grievance or simply jotting down information he found interesting about the people in the hearing. He did this occasionally, as when he noted the marriage of William Birch and Ann Shelby – a thresher and a servant who had each stolen from their respective masters and

[3] KHLC, U2639/O1, Montagu Pennington, February 27, 1811, p. 30.

been forgiven by them with Pennington's mediation.[4] Either way, Pennington also recorded that the beaten boy ran off, but returned to his service with Woodward two days later.

Pennington does not come across in his notebook as an especially callous or cruel man. We have seen that he voted in the minority at Quarter Sessions against the transportation of two first time offenders who had stolen oats for their horses.[5] At a petty sessions meeting, he refused to join in the conviction of a pauper for snaring a rabbit after being refused relief by the vestry, and protested against the man's committal to the house of correction.[6] He once wrote a letter to the Lord of the Treasury defending a smuggler who was "pressed by poverty."[7] At the age of 70 he was still "sound in mind, and in good health," but desired to retire, not only because of his continued grief over the loss of his wife two years previously, and the "foolish and unjust" outcry against clerical magistrates, but also to alleviate his anxiety and unease about the "difficulty of doing even handed justice between the parish and the poor." Nevertheless, reflecting back on his work as a JP, he hoped and believed that he had done his best by his "fellow-creatures, high and low, rich and poor."[8] These glimpses into Pennington's character are given by way of suggesting that if a compassionate and conscientious magistrate like him could casually advocate the horsewhipping of servants (albeit boys) who "behaved ill," then it would seem a certain amount of violence by employers toward their workers was generally tolerated – and even occasionally encouraged.

To an extent this was true, though the limits of 'acceptable' violence against servants were increasingly ill defined and contested in this period. Indisputably, masters originally had

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[4] KHLC, U2639/O1, Montagu Pennington, July 1st, 1812, p. 51; March 24, 1814, p. 79.
[5] KHLC, U2639/O1, Montagu Pennington, July 10, 1810, p. 19.
[6] KHLC, U2639/O1, Montagu Pennington, Dec. 3, 1822, p. 157.
[7] KHLC, U2639/O1, Montagu Pennington, August 1, 1832, p. 207.
[8] KHLC, U2639/O1, Montagu Pennington, January 1833, p. 210-212. Emphasis in original.

the right at common law to discipline their servants with moderate corporal punishment. In *Bleeke v. Grove* (1674), the judges assumed that a servant "poit estre battue pur neglect del service."[9] Matthew Bacon's *New Abridgment of the Law*, published in the 1730s, asserted that it was "clearly agreed, that a Master may correct and punish his Servant in a reasonable Manner for abusive Language, neglect of Duty, &c." Moreover, Bacon stipulated that a master charged by his servant with assault and battery could be acquitted if the servant "gave provoking Language" and the "Punishment was such as is usual from Masters to their Servants."[10] Every edition of Burn's *Justice of the Peace* from its first appearance in 1755 through 1836 advised magistrates that a master had the right to "chastise" his servant in a "reasonable manner," the same way a parent might chastise a child, or a husband might chastise his wife.[11]

Yet what constituted a "reasonable manner" remained ambiguous. Chief Justice Hale determined in 1674 that a husband's right to chastise his wife only encompassed "admonition or confinement to the house," but Maeve Doggett argues that most eighteenth-century theorists assented to the legality of wife-beating.[12] In 1782, King's Bench judge Sir Francis Buller allegedly stated that a husband might beat his wife with a stick no thicker than his thumb. Interestingly, at the July 1828 Salisbury Assizes, almost three decades after Buller's death, Justice James Alan Park claimed during the trial of Nicolas Baker for murdering his wife that Buller had told him "he never had made such a decision as was imputed to him," a statement that

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[9] C. B. Labatt, *Commentaries on the Law of Master and Servant, Including the Modern Laws on Workmen's Compensation, Arbitration, Employers' Liability, Etc., Etc.* Vol. 1: Relation and Contract (Rochester, New York: The Lawyers Co-Operative Publishing Co., 1913), 740; *Bleeke v. Grove* (1674), 1 Sid. 175, 82 Eng. Rep. 1040.

[10] Matthew Bacon, *A New Abridgment of the Law By a Gentleman of the Middle Temple*, Vol. 3 (London: H. Lintot, 1736), 566.

[11] Burn, *Justice of the Peace,* 1st ed., Vol. 2 (1755), 360; Burn, *Justice of the Peace,* new ed. by Thomas D'Oyly, Vol. 3 (1836), 50.

[12] Maeve Doggett, *Marriage, Wife-Beating and the Law in Victorian England* (Columbia, SC: University of South Carolina Press, 1993), 3-10; Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800* (Cambridge: Cambridge University Press, 2003), 118.

Montague Pennington recorded in his notebook.[13] Nevertheless, this notorious 'rule of thumb' became a popular reference point – though not a legal precedent. Only in 1891 were the limits on wife beating finally clarified at common law, when Lord Halsbury declared in the landmark case *R. v. Jackson* that a husband had no right to 'chastise' his spouse at all, "in this or any civilized country."[14]

The definition of "reasonable" chastisement in the case of servants was likewise imprecise. Masters seem to have been granted considerable leeway in the amount of force they might use against their workers. Later editions of Burn included Chief Justice Holt's caveat that a beating must be "*in nature of correction only, and with a proper instrument*." Holt cited a rod as an example.[15] However, rods come in many sizes, and a master wielding even a thin one could still inflict serious injuries or even death. If a servant "by some Misfortune" happened to die in the course of "moderate Correction," it was held to be "homicide by misadventure" and not murder, since the law granted masters the authority to use physical discipline. Only if the correction had been "so barbarous as to exceed all bounds of moderation" would the charge be upgraded to manslaughter at the least, and to murder if the master had kicked the servant to the ground and then "stomp[ed] on his Belly," or used an "instrument improper for correction, and apparently endangering the servant's life," such as an iron bar or a sword.[16]

Yet by the mid-eighteenth century, the right of employers to correct their servants was beginning to be challenged and qualified. The first four editions of William Blackstone's *Commentaries on the Laws of England* advised that a "master may by law correct his apprentice

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[13] KHLC, U2639/O1, Montagu Pennington, July 23, 1828, p.185.
[14] Elizabeth Foyster, *Marital Violence: An English Family History, 1660-1857* (Cambridge: Cambridge University Press, 2005), 12; *R. v. Jackson* (1891), 1 Q.B. 671, CA.
[15] Burn, *Justice of the Peace*, 24th ed., Vol. 1 (1825), 227-228.
[16] Bacon, *New Abridgment,* Vol. 3 (1736), 567; Burn, *Justice of the Peace*, 24th ed., Vol. 5 (1825), 128-129.

or servant for negligence or other misbehaviour, so it be done with moderation."[17] However, the fifth edition, which appeared in 1773, as well as all subsequent editions, amended this statement to read that a "master may by law correct his apprentice for negligence or other misbehaviour."[18] In addition to omitting the phrase 'or servant,' the text now cited the case *Gylbert v. Fletcher* (1629), in which the judges had ruled that "if [an infant apprentice] misbehave himself, the master may correct him in his service, or complain to a justice of peace to have him punished."[19] Together, the changed wording and the citation implied that masters only had the authority to use corporal punishment against apprentices, not other types of servants. It is unclear why a case that was more than a century and a half old was suddenly being invoked to explain this new interpretation of an employer's disciplinary power. Moreover, the judges in *Gylbert v. Fletcher* had not denied a master's right to 'correct' a servant other than an apprentice, or even mentioned other types of servants at all, but simply asserted positively that masters could discipline misbehaving apprentices. Nevertheless, the implication was made in the *Commentaries*, and it did not go unremarked.

Other legal writers and thinkers inferred from Blackstone that age, rather than apprenticeship indentures per se, was the deciding factor in whether servants might be beaten – in moderation – by their employers. Beginning in 1780, editions of Burn, citing the *Commentaries*, stipulated that a master was legally allowed to chastise a servant "being under age: But if the master or mistress beats any servant of full age, it may be a good cause of discharge, on complaint to the justices."[20] Earlier editions of Burn simply stated that the "master is allowed by law, with moderation to chastise his servant." These editions cited Dalton, who had

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[17] Blackstone, *Commentaries,* 1st ed., Vol. 1 (1765), 416.
[18] Blackstone, *Commentaries*, 5th ed., Vol. 1 (1773), 428.
[19] *Gylbert v. Fletcher* (1629), Cro. Car. 179, 79 Eng. Rep. 757.
[20] Burn, *Justice of the Peace*, 14th ed., Vol. 4 (1780), 130.

himself cited the statute 33 H. 8 c. 12 (1542), remarking that the "Master by Law is allowed with Moderation to chastise his Servant or Apprentice."[21] In 1837, Joseph Chitty wrote that a "master cannot, by way of correction, even moderately beat his *servant*, or labourer in husbandry, or otherwise, as he might his child or apprentice," adding that a "master has no right to correct a menial or domestic servant otherwise than by words and remonstrance."[22]

This view had begun to be articulated explicitly in the high court. The judges in *Winstone v. Linn* (1823) remarked that a master "has a greater controul over his apprentice than over a mere servant, for he may even correct his apprentice."[23] In *Mitchell v. Defries* (1845) – the case of a master who had bruised, kicked, and wounded his servant, and torn and damaged his clothing for having "conducted himself lazily and negligently in and about his duty" and "behaved saucily and contumaciously" – Justice McLean ruled that a master did not have "a right to use force in the correction of any servant but an apprentice" and that the "beating of a servant of full age cannot be justified." According to McLean, it was "reasonable" that a distinction should prevail between the cases of adults and those of "infants." He elaborated: "In the latter case it would seem absurd to suppose that that species of correction which a father would extend to his child, should form a sufficient ground for an infant to leave his master's service of his own accord; while in the case of persons of full age, the servant, if beaten, is entitled to act and judge for himself, unrestrained by any controlling authority."[24]

It is noteworthy that the servants Montague Pennington advised Mr. Woodward to horsewhip in 1811 were "boys," given the growing tide of legal opinion that a master had no

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[21] Burn, *Justice of the Peace*, 13th ed., Vol. 4 (1776), 119; Dalton, *The Country Justice,* (1727), 187.
[22] Joseph Chitty, *The practice of the law in all its departments, with a view of rights, injuries, and remedies, and as ameliorated by recent statutes, rules, and decisions*, Vol. 1 (London: Henry Butterworth, 1837), 73; 75.
[23] *Winstone v. Linn* (1823), 1 B. & C. 460, 107 Eng. Rep. 171.
[24] *Mitchell v. Defries* (1845), 2 UCQB 430.

right to beat an adult servant. Nevertheless, many masters continued to 'chastise' their workers of full age and some magistrates felt they were justified in doing so. In 1806 – nearly three decades after the distinction between the correction of infants and adults began to be widely disseminated in editions of Burn's *Justice of the Peace* – the Shropshire JP Thomas Parker heard the complaint of the "yeoman" John Morgan that his master Mr. Thomas had assaulted him. Although Parker conceded that the "assault was made out," he still recommended that Morgan pay for the information and summons, since the "provocation" to Mr. Thomas had been "great." Parker only suggested that Thomas should pay the constable.[25]

The emerging limits on employers' ability to assault their servants benefitted adults and not children, at least theoretically. The opposite was true when it came to other forms of abuse, as a particularly shocking case in 1851 graphically illustrated. The appalling treatment of a servant girl named Jane Wilbred by her master and mistress, covered in lurid detail in newspapers across the country, became a national sensation. George Sloane, a special pleader at the Temple in London, and his wife Theresa had "reduced [the girl] to a perfect skeleton … almost unable to walk about."[26] In July of the previous year, the "sallow-complexioned, plain looking" Mrs. Sloane had selected Jane, then between fourteen and fifteen years old, from the West London Union schoolhouse to come serve her. Jane was responsible for cleaning the rooms, attending the family, and performing all of the domestic chores except for cooking. Mrs. Sloane chose the girl because she was an orphan, which the mistress felt was "more

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[25] SA 1060/168, Thomas Parke, February 14, 1806.
[26] "Charge of Frightful Cruelty Against Mr. Sloane of the Temple," *Liverpool Mercury*, December 10, 1850, p. 2.

advantageous." Presumably she meant it was more advantageous than a child with living parents who might concern themselves about her welfare. Jane was then "in strong, good health."[27]

At first, the Sloanes treated Jane "considerately and kindly." Then, around Christmas 1849, Mrs. Sloane's beloved pet bird died. She blamed Jane for allegedly having "frightened it to death."[28] Thereafter, the Sloanes became brutal and sadistic. They took away Jane's pillow and her blanket. Her meals were severely reduced. It was often eleven o'clock or noon, and sometimes even later, before she got a meagre breakfast, though she began working at 6:00 in the morning. For dinner, she would receive only bread and broth, with some mustard in it. If there was no mustard, they added pepper "in such quantities that it used to burn [her] mouth." She was not allowed anything to drink with her bread. Mrs. Sloane once beat Jane "very much" because she suspected that the girl had drunk a little of the water in which she had boiled meat for her mistress's cat. Mrs. Sloane frequently beat Jane for various other reasons as well – such as pulling the sleeves of her shift over her arms while she worked because she was so cold in the thin, skimpy attire the Sloanes made her wear. Mr. Sloane was often present when his wife assaulted the girl, and regularly beat her himself "first thing in the morning." On one particularly abhorrent occasion, Mrs. Sloane commanded Jane to eat her own excrement. When the girl refused, Mrs. Sloane called her husband and he held Jane down while Mrs. Sloane "forced some of the dirt down [her] throat."[29]

At last, two gentlemen who occupied chambers in the same house as the Sloanes noticed Jane in her attenuated condition and were able to rescue her. The surgeon they summoned to attend her deposed that "her pulse [was] scarcely perceptible, the extremities [were] very cold

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[27] "The Trial of Mr. and Mrs. Sloane," *The Leeds Times*, February 8, 1851, p. 8.
[28] "The Trial of Mr. and Mrs. Sloane," *The Leeds Times*, February 8, 1851, p. 8.
[29] "Charge of Frightful Cruelty Against Mr. Sloane of the Temple," *Liverpool Mercury*, December 10, 1850, p. 2.

and livid; the respiration was feeble, and she was almost unable to speak." He concluded that her suffering was the result of starvation and lack of warmth, and that if the two men had not interfered "she must have died," for she "could not have existed in that state many days longer." There were also "marks of violence" on her body, especially on her neck and shoulders. When she testified at the preliminary hearing, her "wasted and famished" appearance elicited a "deep groan" that "seemed to break from every person present involuntarily."[30]

The trial of Mr. and Mrs. Sloane on multiple counts of assault and neglect took place in February of 1851, and was extensively covered in the national press.[31] There was a "great deal of interest" in the case among the public, and precautions were taken to prevent the courtroom from being "inconveniently crowded."[32] Nevertheless, it was already "thronged with spectators" shortly after 9:00 am.[33] The presiding judges, Justices Coleridge and Cresswell, returned a verdict of not guilty on the charge of "wilfully neglecting to supply Jane Wilbred, an infant of tender years, with sufficient nourishment for her support, by which she became ill." They determined that Jane could not be considered an "infant of tender years" because she was between sixteen and seventeen at the time of the abuse and had not been "kept under durance, or prevented from seeking redress."[34]

Still, Chief Justice Coleridge remarked that it was "impossible not to take into consideration" that the defendants were "a gentleman devoted to the study and practice of the

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[30] "Charge of Frightful Cruelty Against Mr. Sloane of the Temple," *Liverpool Mercury*, December 10, 1850, p. 2.
[31] On the adversarial relationship in the mid-nineteenth century between the justice system and the press, which pursued an anti-establishment agenda by doggedly and extensively documenting class and gender biases in cases including this one, see Judith Knelman, "Class and Gender Bias in Victorian Newspapers," *Victorian Periodicals Review* 26 (1993), 29-35, especially p. 31.
[32] "Trial of Mr. and Mrs. Sloane," *The Morning Chronicle*, February 6, 1851, p. 7.
[33] "The Trial of Mr. and Mrs. Sloane," *The Leeds Times*, February 8, 1851, p. 8.
[34] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, January 9, 2017), February 3, 1851, trial of George and Theresa Sloane (t18510203-485).

law, who must…have known what was his duty" and "a female and a wife, one who it might have been thought would have been the first to protect a young, helpless girl, who was placed in her power, but who…appears…to have taken an equal, if not a greater, part in all the indignities that were practised." The Sloanes pled guilty on all of the other counts of assault, including beating the girl with a shoe, stripping her to the waist, and exposing her to the weather. They were each sentenced to two years' imprisonment, a verdict they heard "without betraying any emotion" before "retir[ing] hastily from the dock."[35]

The Sloanes' acquittal on the first counts of the indictment caused a public uproar.[36] Yet there was legal precedent for the judges' inflammatory decision. As we saw in Chapter Two, the general consensus of the high court in *R v. Friend* (1802), the case of a man starving his two apprentice girls, was that an employer's failure to supply adequate food, clothing, and bedding to any "infant of tender years, unable to provide for or take care of itself" was an indictable misdemeanour. However, the judges determined that in this particular instance the indictment had been defective because it did not specify that the starved apprentices were infants of tender years – though Sarah Quill was in fact thirteen or fourteen years old and Elizabeth Good was only twelve. Their master, John Friend, had been imprisoned at the Exeter Summer Assizes for his crime. Since his guilt was not in dispute, the judges adjourned their final decision so as to prevent his early release from prison.[37]

Nevertheless, nine years Justice Lawrence considered himself bound by that decision in *R. v. Ridley* (1811) when he upheld the acquittal of Elizabeth Ridley, who starved her fifteen-year-old servant Elizabeth Williams and exposed her to the cold and inclement weather, whereby

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[35] "Trial of Mr. and Mrs. Sloane," *The Morning Chronicle*, February 6, 1851, p. 7.
[36] Smith, *Treatise on the Law*, 117.
[37] *R v. Friend* (1802), Russ. & Ry. 20, 168 Eng. Rep. 662.

the girl became "very weak, sick, and ill, and greatly consumed and emaciated in her body." Lawrence found that Ridley's indictment, like Friend's, had been "bad upon the face of it" for failing to indicate that Williams was a "girl of tender years, and under the dominion of the defendant." In the absence of that qualification, she must be presumed to be an adult, from whom it was not a criminal offence to withhold food. Lawrence reasoned that an adult, "if not provided with proper nourishment, may remonstrate, may leave the service, or may complain to a magistrate."[38] This clear history of distinguishing between the negligent treatment of children and adults led to the Sloanes' acquittal for failing to supply food to Jane Wilbred – an adult in the eyes of the judges.

Whatever the legal precedent for the decision, though, the public felt that there had been a miscarriage of justice. Parliament quickly passed the statute 14 & 15 Vict. c. 11 (1851) "in consequence of the great scandal." The new law made it a crime to neglect, abuse, or starve a servant regardless of age:

> Where the master or mistress of any person shall be legally liable to provide for such person, as an apprentice or servant, necessary food, clothing, or lodging, and shall wilfully and without lawful excuse refuse or neglect to provide the same, or where the master or mistress of any such person shall lawfully and maliciously assault such person, whereby the life of such person shall be endangered, or the health of such person shall have been, or shall be likely to be permanently injured, such master or mistress shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years.[39]

This statute seemed to resolve the ambiguities surrounding the physical abuse of servants by granting greater protection from assault and neglect to workers of all ages. Still, as the nineteenth-century commenter William Andrews Holdsworth emphasized in his treatise on the

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[38] *R. v. Ridley* (1811), 2 Camp. 650, 170 Eng. Rep. 1282.
[39] Smith, *Treatise on the Law*, 117; 14 & 15 Vict. c. 11 (1851).

law of master and servant, "*permanent* injury to health must result" from the mistreatment of a servant for this statute to apply.[40] While lawmakers may have balked at instances of excessive abuse, especially in the face of popular opprobrium, it appears that they were still reluctant to imprison employers for the routine 'correction' of disobedient and disorderly workers, however much this practice was being challenged in the high courts.

Amid the shifting and sometimes contradictory limits imposed in theory by statute, by judicial ruling, and by legal handbooks on masters' mistreatment of their servants, there were also the limits set in practice by the people involved. As when friends, relatives, and neighbours would intervene in cases of wife beating that exceeded 'tolerable' bounds, by shaming or scolding the offender or summoning the police, family members and friends also interceded when they felt that an employer's treatment of a servant had crossed a line.[41] For instance, when Martha Lewey's mistress Mary Green, who had previously beaten her "several times," knocked her out the back door and threatened to "beat out her brains before Michaelmas Day" if she stayed in her service, Lewey ran home to her mother, who returned with her the following morning and demanded to know why Green "so abused her daughter."[42] Mary Courtnall's mother Abigail complained to the magistrate Devereux Edgar that Diana Laurence, her daughter's mistress, had abused her with unreasonable blows.[43] On another occasion, Edgar heard the complaint of the churchwardens of the parish of Kirton that Adam Crosby had abused

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[40] Holdsworth, *The Law of Master and Servant*, 50.
[41] Foyster, *Marital Violence*, 168-204; Nancy Tomes, "A 'Torrent of Abuse': Crimes of Violence Between Working-Class Men and Women in London, 1840-1875," *Journal of Social History* 11 (1978): 335-336; E. P. Thompson, "Rough Music," *Customs in Common: Studies in Traditional Popular Culture* (New York: New Press, 1993), 500-508.
[42] BL, Add. MS 42600, Memorandum Book of Business Transacted as a JP by William Brockman, 1700-1702, p. 3.
[43] SuffRO, HA247/5/4, Edgar Devereux, 201.

his poor child apprentice John Flag.[44] In the Pre-Sentencing Database, 14 assault charges, or 7% of them, were brought on behalf of workers by their parents or other concerned parties.

Of course, servants themselves also set limits on the amount of 'correction' they would tolerate, by bringing grievances before magistrates when they felt that they were being mistreated. As Shani D'Cruze observes, the initiation of court cases represented "resistance on the part of servants." They were proclaiming that the assaults they had endured constituted an "illegitimate use of authority," despite the fact that physical discipline was "commonplace" in society.[45] Many servants were not prepared to passively accept abuse at the hands of their masters.

Employers Assaulting Servants

Servants might not have acquiesced to the abuse, but their assault charges reveal that they did suffer it with alarming frequency. Some incidents seem to have been the result of employers lashing out in a sudden burst of temper or irritation. For instance, John Hogben of Kent pushed his servant Elizabeth Slanden down the stairs because she was in the habit of sleeping in and had come to his room late that particular morning for the key. According to her version of events, he had struck her a "violent blow by which [she] fell down stairs." He countered that after telling her to pack her things and be off he merely "passed [his] hand over her." He admitted that she fell down the stairs, but not "above a step or two."[46] In Nottinghamshire, an argument between the farmer Henry Page and his servant Sarah Cumberland escalated into violence. She had come back into the house after milking the cows and her master asked why she had left two dishes and a pan unwashed. She replied that she had forgotten them and that "the other wench might get up

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[44] SuffRO, HA247/5/4, Edgar Devereux, 521.
[45] Shani D'Cruze, *Crimes of Outrage: Sex, Violence and Victorian Working Women* (DeKalb: Northern Illinois University Press, 1998), 92.
[46] KHLC, PS/US/ Sd/1, Lathe of Scray Petty Sessions, May 5, 1831.

and wash them whilst she went a milking." Page did not hear what she said and asked her to repeat herself. She refused, whereupon he "pulled her ears and kicked her in the backside and otherwise ill used her."[47]

Other employers seem to have been inveterate offenders when it came to assaulting their servants. In October 1841, the cooper John Green was found guilty at the Tewkesbury petty sessions of ill-using his apprentice Edmund Francis Stinton and fined 10 shillings plus the costs of the proceedings.[48] A month and a half later Green was back, having assaulted Stinton again. This time the magistrates discharged the apprentice.[49] In Durham, John Bell appeared before Edmund Tew three times in the space of a year for mistreating his workers. His servant John Haslop first complained in July 1754 that Bell had beaten him and turned him away without wages. In February 1755, Haslop was back, accusing Bell of beating and bruising him and kicking him out of his house and refusing to give him his clothes or his wages. On this occasion, Tew parted the men and Bell paid all the charges. Yet in August 1755, Bell turned up in Tew's records again, this time charged with beating another servant, Thomas York, "in a cruel manner."[50] The farmer Richard Stephens was also accused of assault three separate times in one year. John Hodges procured a summons against him for assault from the magistrate Henry Yate in April 1802. Two months later, Alice Bullock received a warrant against Stephens for abusing and assaulting her and turning her out of doors without paying her wages. Then two months after this incident, in August 1802, William Pitcher complained to Yate that Stephens had "several times misused him, particularly by using threatening words of mischief toward him."[51]

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[47] NA, M8051, Sir Gervase Clifton, 16.
[48] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, 1829-1853, p. 99.
[49] GA, PS/TW/B/M1/1,Tewkesbury Petty Sessions, 1829-1853, p. 102.
[50] *Justicing Notebook of Edmund Tew*, 50, 54, 58.
[51] HARC, BB88/1, Henry Yate, p. 52, 89, 104.

Pitcher's grievance over Stephens' threatening words notwithstanding, many of the assaults perpetrated against servants were quite vicious. The Durham mariner James Robinson had cruelly beaten his two apprentices and knocked out their teeth.[52] The Surrey gentleman John Harcourt, who was suspected of being a lunatic, used to terrorize his wife and servants in a "very outrageous manner." On one occasion when he was beating and kicking his wife, his servant Thomas Goldfish attempted to intervene. Brandishing a knife, Harcourt threatened to "run him through" if Goldfish gave her any assistance. Harcourt "frequently" beat Sarah Hopkins, a maid of three years' standing with the family, and the other servants as well, telling them he would "kill them and send them to Hell." The shoemaker's wife Mrs. Palmer, who worked in the house for three weeks, witnessed him turn his wife and her maid Elizabeth Stevens out of doors and swear he would "do for" anybody who let them back in. Mrs. Palmer worried that "her mistress and the servants of the family [were] in great and continual danger of being destroyed by him" and concurred with Sarah Hopkins that Harcourt seemed to be "entirely disordered in his senses."[53]

Many employers made use of some sort of instrument when assaulting their workers. W. Johnson of Kent, for instance, beat and bruised his servant Richard Neal and broke his head open with a three-pronged dung-fork, which Neal produced when he made his grievance to William Brockman.[54] Sometimes masters improvised weapons out of the tools of their trade. For example, the Ludlow whitesmith Mr. Day hit his apprentice Robert James on the head with his forge hammer after finding fault with his work.[55] Other employers, it seems, simply seized on objects conveniently close to hand. Jasper Gregory – probably a member of the notorious

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[52] *Justicing Notebook of Edmund Tew*, 102.
[53] *Deposition Book of Richard Wyatt*, 47.
[54] BL, MSS Add. 42598, William Brockman, July 5, 1698, p. 59.
[55] SA, PS1/2/A/1/1, Ludlow Petty Sessions, Sept. 15, 1846.

Gregory Gang, associates of the infamous highwayman Dick Turpin – accused his master Jeremiah Woodley of beating him with an iron and broomstick.[56] The Durham boat builder Edward Elder threw knives at his servant Ann Brown.[57]

Mistresses were capable of being just as violent as their male counterparts. Hannah Menham, the wife of a Durham pot maker, cruelly beat and *bit* her servant, Elizabeth Colville, and bruised her "on the breast."[58] In Shropshire, Mary Lloyd broke her servant Elizabeth Williams' arm. She tried to disclaim responsibility by referring in the passive voice to "the accident of her arm being broken," as though she had taken no part in its breaking. However, on the presiding magistrate Thomas Parker's recommendation, Lloyd was willing to give the girl nine months' wages instead of the five and a half that were due – the difference adding up to more than a pound – and half a guinea more for her board if she consented to drop the assault proceedings. Given this capitulation to avoid trial, it is doubtful that the breaking of Elizabeth Williams' arm was accidental.[59] These findings support those of Jennine Hurl-Eamon in her study of gender and petty violence in early modern London that "when women *did* assault, they were seen to be almost as violent and dangerous as male assailants."[60]

Mistresses were actually proportionately more likely than masters to use instruments during their assaults, with explicit reference to some type of weapon being made in 6 of the charges against mistresses, or 19% of them, and 16 of those against masters, or 10% of them. For instance, the Durham farmer's wife Elisabeth Clark bruised the head and face of her fourteen-

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[56] *Justice in Eighteenth Century Hackney*, 19; Paley, introduction, xi.
[57] *Justicing Notebook of Edmund Tew*, 194.
[58] *Justicing Notebook of Edmund Tew*, 97.
[59] SA 1060/168, Thomas Parker, December 1, 1809.
[60] Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus: Ohio State University Press, 2005), 70.

year-old hired girl Margaret Robson with an iron.[61] Ann Herbert, an ale seller in the same county, beat her maidservant Catherine Gentle and attempted to burn her with a candle.[62] The same Hannah Menham who bit her servant had previously struck and bruised another one named Bridget Adams with an iron poker.[63] Perhaps mistresses, who might not have the same advantages of strength as some of their male counterparts, were more emboldened brandishing weapons. However, it is important to remember that a majority of both male and female employers made their attacks with their bare hands (and feet, and teeth), if the failure in most cases to mention another instrument is any indication. Moreover, armed or not, women were not necessarily any less violent than men.

	Female Employers	Male Employers
Female Victim	27 (87%)	43 (27%)
Male Victim	4 (13%)	108 (68%)
Victims of Both Sexes	0 (0%)	1 (1%)
Sex of Victim Unclear	0 (0%)	7 (4%)
Total	**31**	**159**

Table 4.1 – Gender of Assault Victims of Male and Female Employers
This table includes all of the cases of assault initiated by servants against male and female employers in both the dissertation's databases. It excludes the three cases in which the sex of the employer could not be determined. Four cases involved both a male and female employer assaulting a servant. These cases were included in the data of both male and female employers and so counted twice. The percentages in parentheses indicate the shares of all assault charges brought against employers of that sex made up by cases involving servants of each sex.

It should be noted that their violence was more often directed at servants of the same gender as themselves. Though mistresses could be quite violent to their male workers when they

[61] *Justicing Notebook of Edmund Tew*, 197.
[62] *Justicing Notebook of Edmund Tew*, 198.
[63] *Justicing Notebook of Edmund Tew*, 103.

did assault them – Alice Harper, for instance, bruised her servant John Robson with a poker[64] – Table 4.1 shows that female workers nevertheless accounted for 27, or 87%, of the victims of female employers' assaults in the dissertation's sources. Charges against male employers were also more likely to be made by servants of the same gender, though to a lesser extent than in female employers' cases. While 108 of masters' accusers, or 68% them, were male workers, 43, or 27% of them, were female workers. Only 4 of the accusers, or 13% of them, in charges made against female employers were male workers. Thus, masters were charged by servants of the opposite sex more than twice as often, proportionately, as mistresses were. This finding corroborates that of Hurl-Eamon, who asserts in her analysis of assault in early modern London that "women targeted other women to an even greater degree" than men targeted other men.[65]

This tendency of female employers to be charged with assault by female servants is not surprising. Female servants were the plaintiffs in 72, or 64%, of the total employment disputes in which mistresses were defendants in the Pre-Sentencing Database. Mistresses were probably more likely to employ female servants or to have closer management of them than of male servants. Therefore, they had more opportunities to get into conflicts with these female servants, including violent quarrels. Of course, the share of mistresses' accusers made up of women workers is even higher in cases of assault than in master and servant disputes overall. It is possible that female employers generally felt less intimidated engaging in physical altercations with other women than with men, who would be more likely to outweigh them.

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[64] *Justicing Notebook of Edmund Tew*, 114.
[65] Hurl-Eamon, *Gender and Petty Violence*, 70.

	Female Servants	Male Servants
Female Assailant	24 (35%)	3 (3%)
Male Assailant	41 (60%)	108 (96%)
Assailants of Both Sexes	3 (4%)	1 (1%)
Total	**68**	**112**

Table 4.2 – Gender of Employers Assaulting Male and Female Servants
This table includes all of the cases of assault initiated by male and female servants in both the dissertation's databases. It excludes the ten cases in which the sex of the servant could not be determined. One case involved both a male and female servant being assaulted by the same (male) employer. This case was included in the columns of both male and female servants, and so was counted twice. The percentages in parentheses indicate the shares of all assault charges brought by servants of that sex made up by cases involving employers of each sex.

Despite assaulting very few male servants, if prosecutions are any indication, mistresses were actually overrepresented as defendants in assault cases. Though female employers accounted for just 112 defendants in master and servant conflicts in the Pre-Sentencing Database, or 7% of them, they accounted for 31 of the defendants in cases of assault, or 17% of them. Part of the explanation for this overrepresentation of mistresses among accused assailants lies in the fact that female servants were also overrepresented in assault cases as plaintiffs, as we will see in the following section. Women workers in general brought more grievances against female employers than male workers did. Mistresses were defendants in 72 female servants' complaints overall, or 23% of them, compared to 37 male servants' complaints overall, or just 3% of them. As Table 4.2 indicates, they also made up 3, or 3% again, of the accused in male workers' assault charges specifically. Yet they accounted for 24 of the defendants in female workers' assault prosecutions, or 35% of them, an even higher share than they did of defendants in female workers' employment grievances overall. Not only does it seem that mistresses were even more likely to assault their female workers than to commit other master and servant offences against them, but female workers – who already brought the most complaints overall against mistresses both relatively and absolutely – also brought proportionately more assault charges in general

than male workers. This confluence of circumstances helps to explain the overrepresentation of female employers as defendants in cases of assault.

The Servants Who Were Assaulted

Technically, magistrates did not have summary jurisdiction over assault until it was granted in 1828 under the statute 9 Geo IV c.31, which stipulated: "Where any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence."[66] Nevertheless, as they did with thefts, JPs also dealt summarily with assaults before they officially had jurisdiction over these cases. For instance, when Sarah Price complained to Montague Pennington in 1811 that her mistress Mrs. French had struck her and knocked her down, Pennington wrote a letter to French rather than issue a warrant or indict her. French denied Price's claims, but asked Pennington for his advice. He suggested that French "give something to the girl and make it up," which she did.[67]

In addition to acting as mediators, even when they lacked the authority to do so, magistrates might also treat assault as a breach of contract on the part of the employer. From 1780 on, per the distinction drawn in Blackstone's *Commentaries* between the correction of underage and adult servants, editions of *The Justice of the Peace* noted that a beating administered to "any servant of full age" might "be a good cause of discharge, on complaint to the justices."[68] Thus, JPs might approach an assault case as a master and servant dispute and deal with it summarily on that basis. For example, Ralph Drake Brockman discharged Elizabeth

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[66] Burn, *Justice of the Peace*, new ed. by Thomas D'Oyly, Vol. 3 (1836), 54.
[67] KHLC, U2639/O1, Montagu Pennington, October 2, 1811, p. 38.
[68] Burn, *Justice of the Peace*, 16th ed., Vol. 4 (1788), 151.

Nomington from her service with six months' wages and "half a guinea over" because her master George Clarke had beaten her with a horsewhip.[69] He also discharged Catherine Bean, with eight months' wages, after her mistress Mary Arnold assaulted her.[70]

Whether they hoped for mediation, summary adjudication, or committal for trial, workers did not hesitate to approach magistrates with complaints of abuse. Indeed, they were plaintiffs in 189, or 83%, of the 227 cases involving assault in the dissertation. Assault accounted for 187, or 11%, of all servants' grievances in the Pre-Sentencing Database and 2 of their 5 complaints in the Post-Sentencing Database. Ninety-six – or 51% – of these charges occurred prior to1773, when the fifth edition of Blackstone's *Commentaries* appeared, differentiating between the 'correction' of children and adults. Before 1773, 42 assault plaintiffs, or 44% of them, were either apprentices or servants whose parents or guardians initiated charges on their behalf. After 1773, these two groups together accounted for 31 complainants, or 33% of them. If we assume that the majority of the remaining plaintiffs would have been considered servants "of full age," it seems that Blackstone's distinction did have some effect on the proportions of adult workers and 'infants' prosecuting assaults. However, it is clear that adult servants were protesting their masters' use of physical force against them well before legal writers and high court judges began to disallow it, and that children – or their guardians – continued objecting to it even after its use was confirmed in their case.

Indeed, it is striking that even though masters were permitted to 'correct' their apprentices, complaints about assault still accounted for 47 of the grievances brought by male apprentices in the Pre-Sentencing Database – or 43% of them – and 2, or 33% – of those brought

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[69] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, March 25, 1771, p. 74.
[70] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, June 9, 1773, p. 78.

by female apprentices. These were not all complaints of 'severe' or 'immoderate' abuse, either. In 1848 at a meeting of the Lathe of St. Augustine petty sessions, the dredger's apprentice Ralph Leggett Adam deposed that his master William James Matherby had hit him while at breakfast. According to Adam, his master had cut a piece of bread and butter for his sister, who claimed it was not fit to eat and offered it to her brother. Adam also refused to eat it. Matherby told the apprentice "let us have no more nonsense or I shall beat you." The boy still refused to eat the bread, and his master struck him once on the shoulder and once on his side with his closed fist. Adam admitted that the "blows were not violent."[71] The magistrates did dismiss his complaint, but the fact that he brought it at all shows that apprentices were not always prepared to suffer abuse from their masters, whatever the law allowed.

	Female Workers	Male Workers
Assault	52 (76%)	88 (80%)
Assault and Detained Wages	16 (24%)	22 (20%)
Total	**68**	**110**

Table 4.3 – Shares of Servants of Each Sex Bringing Different Types of Assault Complaints in Pre-Sentencing Database

In some instances, workers complained that their employers had not only assaulted them but also withheld their pay. For example, Sarah Rogers charged her mistress Ann Jones before the Shropshire JP Thomas Parker with assault and detention of 5 shillings 6 pence, the balance of wages due to her.[72] In a renowned incident of 1831, referred to by contemporaries as the "Pap-Spoon Case," a nursemaid brought an action for assault and false imprisonment against her master, Charles William Vane, the Marquess of Londonderry. The details of the assault have been lost, but public attention was captured by the fact that Lord Londonderry had allegedly paid

[71] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, May 13th, 1848.
[72] SA 1060/168, Thomas Parker, June 28, 1810.

the nurse only £10 of the £40 he had received for the care of his infant daughter from Queen Adelaide, the baby's godmother. Lord Londonderry was a figure of contempt and ridicule at the time for his anti-Reform stance, and this episode became the subject of a satirical print that depicted him pushing the nurse angrily out of the nursery door while clutching a cheque for £40 and ordering her to "cease [her] bold demand" (see Figure 4.1). The assault trial was twice postponed at the request of Lord Londonderry's lawyers before they obtained a rule for a special jury to ensure him an impartial hearing amid the "present degree of popular excitement," over the objections of opposing counsel that this move was another delaying tactic. According to British Museum curator Mary Dorothy George, the case was soon after settled out of court with Lord Londonderry paying £70 damages and costs.[73]

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[73] *Thorne v. Marquess of Londonderry* (1831), 8 Bing. 26, 131 Eng. Rep. 310; "Court of Common Pleas, Westminster, November 12," *Times*, November 14, 1831, 3. *The Times Digital Archive*. Accessed January 8, 2017. http://find.galegroup.com.ezproxy.library.yorku.ca/ttda/infomark.do?&source=gale&prodId=TTDA&userGroupName=yorku_main&tabID=T003&docPage=article&searchType=AdvancedSearchForm&docId=CS52190574&type=multipage&contentSet=LTO&version=1.0; Mary Dorothy George, *Catalogue of Political and Personal Satires Preserved in the Department of Prints and Drawings in the British Museum*, Vol. 11 (London, British Museum Trustees: 1954).

Figure 4.1 – "The Ruler and the Rabble – or No Reform – no Reform" Satirical Print
Henry Heath, 1831. From British Museum Satires 16842, Museum Number 1868, 0808.8532; http://www.britishmuseum.org/research/collection_online/collection_object_details.aspx?objectId=1661685&partId=1&people=134762&peoA=134762-1-9&page=1

According to Table 4.3, female workers, such as Lord Londonderry's unnamed nursemaid, brought proportionately more complaints for assault and wages than their male counterparts. However, this is due to the fact that apprentices accounted for a larger share of male workers than female workers making assault charges. Only two female plaintiffs, or 3% of them, in assault cases were apprentices, compared to 47, or 43%, of the male plaintiffs, as Table 4.4 (below) shows. Apprenticeship as originally conceived did not include the payment of wages to the apprentice. The master was supposed to provide training in a trade in exchange for labour. In practice, apprentices did have money, usually received in one of four forms of payment: in small sums intended for pocket money; in earnings from work done over the expected amount; in lieu of one of the master's obligations to the apprentice, such as the provision of clothing; or, in the form of a regular wage that was a proportion of a journeyman's. Although this last form of

payment, sometimes called 'colting,' was practiced in some occupations from the seventeenth century, it "has generally been considered a nineteenth-century device for living-out apprentices."[74] Since apprentices were not usually paid wages in the same way that other workers were, they would be less likely to make wage complaints. When apprentices are removed from the sample of assault plaintiffs, male workers brought proportionately more grievances for unpaid wages than their female counterparts – in 22 cases, or 35% of them, compared to 16, or 24%, of female workers' cases.

	Female	Male
Apprentices	2 (3%)	47 (43%)
All Other Workers	66 (97%)	63 (57%)
Total	**68**	**110**

Table 4.4 – Number and Share of Apprentices and All Other Workers Making Assault Complaints by Gender in the Pre-Sentencing Database
The percentage in parentheses refers to the share of all workers of that sex made up by each category of worker.

In general, though, female workers brought proportionately more assault charges than male workers. These 68 complaints made up 22% of female servants' total grievances in the Pre-Sentencing Database, whereas male workers' assault complaints, of which there were 110, made up just 9% of their total grievances. Moreover, women workers made up 36% of all plaintiffs in assault cases in this database, while accounting for 316, or 19%, of all plaintiffs in employment disputes in general. It seems that female servants comprised a disproportionately high share of assault victims, or at least of those willing to seek magisterial intervention. This overrepresentation is even more apparent when we separate apprentices from all other workers making assault charges, as Table 4.4 shows. Non-apprenticed female workers actually brought a larger number of assault complaints proportionately and absolutely than non-apprenticed male workers.

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[74] Lane, *Apprenticeship in England*, 89-90.

	Female Servants	Male Servants	Female Apprentices	Male Apprentices
Agreed/Settled	16 (24%)	4 (6%)	0 (0%)	8 (17%)
Acquittal of Employer	0 (0%)	1 (2%)	0 (0%)	1 (2%)
Bound to Appear for Trial	0 (0%)	1 (2%)	0 (0%)	2 (4%)
Discharge of Servant	9 (14%)	4 (6%)	1 (50%)	5 (11%)
Discharge with Abated Wages	0 (0%)	1 (2%)	0 (0%)	0 (0%)
Dismissed Case	3 (5%)	5 (8%)	0 (0%)	6 (13%)
Fine/Financial Penalty	6 (9%)	5 (8%)	0 (0%)	2 (4%)
Return to Work	2 (3%)	2 (3%)	0 (0%)	0 (0%)
Return to Work, Abated Wages	0 (0%)	2 (3%)	0 (0%)	0 (0%)
Reprimand	0 (0%)	0 (0%)	0 (0%)	2 (4%)
Summons/Warrant Issued	16 (24%)	29 (46%)	0 (0%)	17 (36%)
Wages Paid in Whole or Part	8 (12%)	4 (6%)	0 (0%)	0 (0%)
Other	1 (2%)	1 (2%)	0 (0%)	3 (7%)
Not Recorded	5 (8%)	4 (6%)	1 (50%)	1 (2%)
Total	**66**	**63**	**2**	**47**

Table 4.5 – Outcomes of Assault Charges Brought by Female and Male Servants and Female and Male Apprentices in Pre-Sentencing Database

Female servants were arguably more successful than male servants in bringing assault charges. There were too few female apprentices to make a comparison of the outcomes of their grievances with those of male apprentices worthwhile. However, the outcomes of the complaints of non-apprenticed female workers can be contrasted with those of male workers. Table 4.5 shows the results of all the assault charges brought by apprentices and non-apprenticed workers of both sexes. As with other types of employment disputes, the outcomes of these charges were not always recorded. In 21 cases initiated by female servants – or 32% of them – and 33 cases initiated by male servants – or 52% of them (as well as one of the two cases brought by female apprentices, and 18, or 38%, of those brought by male apprentices) either no action at all was documented or else the presiding magistrate issued a summons or warrant for the assailant and then the case disappeared from that record. In once case involving a male servant, and two involving male apprentices, the abusive master was committed for trial. For instance, Edmund

Tew bound over the boat builder George Hopper to appear at the next Durham Quarter Sessions for "cruelly kicking and laming his apprentice," Henry Dixon.[75]

However, the data from cases with documented outcomes suggests that non-apprenticed male servants (and male apprentices, for that matter) did not fare quite as well as non-apprenticed female servants when complaining of assault. Table 4.5 shows that magistrates fined abusive employers in 6 cases where the plaintiff was a female servant and 5 where the plaintiff was a male servant. For example, the justices at the Lathe of Scray petty sessions who heard the case of John Hogben pushing his servant Elizabeth Slanden down the stairs fined him for the assault.[76] In their capacity as mediators, magistrates also encouraged workers to come to agreements with their employers that often involved some monetary compensation. For example, in May of 1838 at the Oxford Police Court, Hannah Allen charged her mistress, the baker's wife Sophia Collins, with "having assaulted her and turn[ed] her into the street late at night from a jealous feeling of her husband's intimacy with her." Upon hearing "an explanation" from Hannah, Mrs. Collins "acknowledged her fault in using hasty expressions and said she believed there was no ground for them." She consented to give the girl 20 shillings and promised to provide her with a good character reference.[77] JPs facilitated these types of settlement for female servants at four times the rate that they made similar arrangements for male servants – in 16, or 24%, of the complaints of the former, and 4, or 6%, of the latter's grievances. Furthermore, JPs also discharged female servants from abusive situations at more than twice the rate that they discharged male servants – in 9 female servants' cases, or 14% of them, and 4 male servants' cases, or 6% of them.

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[75] *Justicing Notebook of Edmund Tew*, 156.
[76] KHLC, PS/US/ Sd/1, Lathe of Scray Petty Sessions, May 5, 1831.
[77] OHC, PS7/A1/1, Oxford Police Court, May 4, 1838.

The merits of fines, discharges, and agreements brokered between violent employers and their servants are debateable. These outcomes might well be considered too lenient in light of the cruel abuse that some employers inflicted on their workers. For instance, despite the fact that after the mid-eighteenth century incarceration was largely superseding fines as the most common punishment for assault, in the context of a marked shift in sentencing patterns, only one employer was actually committed to the house of correction for beating a worker in all of the dissertation's sources.[78] In 1796, the tailor Thomas Bolton was convicted at the Staffordshire Quarter Sessions of violently assaulting his apprentice John Shenton. He was fined one shilling and incarcerated for 14 days.[79] The 64-year-old Gloucestershire "cattle doctor" William Harvey was also imprisoned for ten days after beating his apprentice Charles Lyme, but in this case Harvey was committed for failure to pay the fine levied against him for the assault, rather than for the assault itself.[80] Yet inadequate as they could occasionally be, outcomes like financial restitution and liberation from an abusive situation still benefited the plaintiffs in some measure. Other outcomes, such as the servant being ordered to return to work, sometimes with abated wages, or the complaint being dismissed outright, were obviously less satisfactory.

These unsatisfactory outcomes also occurred proportionately more often in cases brought by male servants. As Table 4.5 reveals, two of the male servants who were sent back to their service, or half of them, had deductions made from their wages for their trouble. After Richard Jones charged his master Samuel Lloyd with assault, Thomas Parker abated two days' pay for the time he had "absented himself on the complaint," and ordered him to continue his service.[81] Parker sent another man, Thomas Williams, back to his master Mr. Ward with a deduction of ten

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[78] King, *Crime and Law in England*, 234.
[79] SRO, Q/SB, Calendar of Prisoners, 1777-1799, Michaelmas Sessions, October 1, 1796.
[80] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoner 350.
[81] SA 1060/168, Thomas Parker, February 10, 1807.

days' wages after Williams charged Ward with assaulting him.[82] No female servants pressing assault charges received any wage abatements, though Devereux Edgar did threaten to send one girl to the house of correction if she did not return to her service as ordered. Mary Crane actually brought the grievance on behalf of her sixteen-year-old daughter Hannah, whose master Henry Giles Jr. had "in a most violent manner beaten & bruised" her, turned her out of his house, and refused to pay her wages for the three months she had served. Initially, Edgar summoned Giles to be examined touching the assault. Then on the next line he made a note that he had ordered Hannah Crane to continue in her service or be imprisoned in the bridewell.[83] He did not indicate the reasoning behind this decision, but presumably he had not found Hannah's complaint credible.

Overall, though, magistrates dismissed assault charges brought by male servants proportionately more often than those brought by female servants, as Table 4.5 showed. Five, or 8%, of male servants' accusations were dismissed, compared to 3 female servants' accusations, or 5% of them. Male apprentices were even more likely to have their cases dismissed. This happened in 6, or 13%, of their complaints. Often, magistrates did not record a reason for dismissing assault charges. For instance, the JPs of the Bicester petty sessions did not offer any explanation for dismissing the apprentice George Elstone's grievance against his master Henry Heath for striking him and beating him.[84] Nor did Edmund Tew explain why he was dismissing the warrant he had at first issued against the mariner Thomas Atkinson for assaulting his apprentice John Briggs, despite observing that Atkinson was a "drunken fellow and when so a

[82] SA 1060/168, Thomas Parker, March 24, 1813.
[83] SuffRO, HA247/5/4, Devereux Edgar, 22.
[84] OHC, Trum I/1, Bicester Petty Sessions, December 21, 1838.

mad fellow." This hardly seems like a rebuttal of the apprentice's claims of abuse.[85] It is likely that in cases where the plaintiff was an apprentice, the magistrates felt that the beatings had not been immoderate and the masters had been within their rights to 'correct' the complainants.

On the more infrequent occasions that JPs dismissed the charges of female servants, they often seemed to doubt the veracity of the plaintiffs rather than the severity of the alleged beating. For example, as we saw in the Introduction, the magistrates dismissed Sophia Wanstall's case against her master Mr. Sladden for kicking her when she tried to collect her clothing, after hearing testimony from the defendant and a housemaid that Wanstall had been "very drunk."[86] The magistrates of the Cheltenham petty sessions dismissed Esther Brooks' assault charge against her master John Reeves after hearing conflicting accounts of the incident. According to Brooks' testimony, she had been milking the cows in the yard when Reeves returned home around 6:00 pm and asked why the task had not yet been finished. Esther thought "the boy" had done the milking "as usual," and got into an altercation with Reeves when she defended herself against his recriminations. She deposed that Reeves shook her off her stool, pushed her against the barn door, and struck her mouth with his open hand, causing her nose to "burst out with blood." However, the witness Henry Baines, possibly "the boy" normally responsible for the milking, swore that "after some words" about the cows Esther had flung a stone at her master and threatened to strike him.[87]

Overall, though, female servants seem to have had relatively more success than male servants at bringing complaints about assault. Gender played a role in this success, as high-profile cases of abuse can help illustrate. These instances of the gross mistreatment of servants,

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[85] *Justicing Notebook of Edmund Tew*, 70.
[86] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, May 13, 1843.
[87] GA, PS/CH/M/1, Cheltenham Petty Sessions, 1834-1835; April 11, 1835.

such as the beating and starvation of Jane Wilbred by the Sloanes, captured national attention. Fae Dussart observes that British newspapers often reported on them in sensational detail.[88] On one level, the fascination and outrage that they generated speak to increasing popular disgust with the physical abuse of servants in general. We have seen that the high courts had already begun ruling against the right of employers to 'chastise' adult servants. Their decisions aligned with a growing feeling among the general public, or at least the middle class, that physical 'correction' was unacceptable. William Pinder Eversley, the author of a treatise on the law of domestic relations, wrote in the last quarter of the century that although a master could technically still 'moderately punish' an underage worker, "[i]n these days, when corporal punishment is viewed with disfavour, and convictions are a frequent result of charges of assault, and heavy damages are given in civil suits, a master would be wise who refrained from lifting his hand against even a young servant. …If a servant be incorrigible, let him be discharged."[89]

The presiding magistrate in a case of 1868 that was reported in *The Times* made a similar assertion. Mary Barry had brought an assault charge against a pair of sisters who employed her as a domestic servant. She testified that when she did not get up at 6 in the morning as was required, her mistresses denied her breakfast and dinner and struck her hands and shoulders repeatedly with a thin cane. The sisters protested that she "had never been treated with the least cruelty…what had been done was for the cleanliness of her own person and a desire to get her out of slovenly and bad habits…. She was slovenly and obstinate and needed correction."

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[88] Fae Dussart, "'Strictly Legal Means': Assault, Abuse and the Limits of Acceptable Behaviour in the Servant/Employer Relationship in Metropole and Colony, 1850-1890," *Colonization and Domestic Service: Historical and Contemporary Perspectives*, ed. Victoria K. Haskins and Claire Lowrie (New York: Routledge, 2015), 159-160.

[89] William Pinder Eversley, *The Law of the Domestic Relations. Including Husband and Wife: Parent and Child: Guard and Ward: Infants: and Master and Servant*, 2nd ed. (London: Steven and Haynes, 1896), 860-861.

Although he dismissed the case against the sisters, the magistrate remarked in closing that "in former times" the use of corporal punishment by employers had been permitted, "but that fashion had now passed away…it would have been better when they found they could do nothing with [Mary] to have sent her away."[90]

It is not a coincidence that Jane Wilbred and Mary Barry were female servants. Invariably, the cases of abuse reported in the newspapers involved female servants. As Carolyn Steedman has said, they were "'good to think with,' specifically to think through the great questions of moral sentiment, sympathy and the social order, rank, class and personhood."[91] They were also good for 'thinking through' the limits of employers' authority to 'correct' their workers. Abused female servants became symbols of the illegitimate exercise of this authority – servants such as Jane Wilbred, whose cases came before the courts, attracted extensive press coverage, and created legal precedents or even new laws. The cruelty of the treatment that these girls and women endured was thrown into sharp relief by their femininity.

In *Family Fortunes*, Davidoff and Hall argue that with the emergence of the idea of separate spheres for men and women there also came a dichotomous understanding of the categories of masculinity and femininity. Women were thought to be child-like, representing "the innocence of the natural world which active masculinity must support, protect – and oversee."[92] Scholars have taken issue with the theory of the development of separate spheres, showing that there was greater continuity in gender relations than this notion suggests, and that the division between the feminine/domestic and masculine/public was never complete even in the middle

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[90] *The Times*, 7 April, 1868, 11; quoted in Dussart, "'Strictly Legal Means,'" 164-165.
[91] Carolyn Steedman, *Master and Servant: Love and Labour in the English Industrial Age* (Cambridge: Cambridge University Press, 2007), 145.
[92] Davidoff and Hall, *Family Fortunes*, 28.

class, let alone the working class.[93] Still, the rhetorical power of the notion that females were both subordinate and delicate, inviolate creatures – however much it clashed with reality and with other competing cultural conceptions about masculinity and femininity – continued to hold currency.

It influenced the treatment of assault plaintiffs in court. Nancy Tomes has suggested that in the nineteenth century there was a growing tendency among magistrates, spurred by the moralizing campaigns of middle-class reformers, to view and treat working-class women assaulted by men as "suffering victim[s]."[94] We have seen that when Chief Justice Coleridge sentenced Mr. and Mrs. Sloane for their barbaric abuse of Jane Wilbred, he declared that it was "impossible not to take into consideration" that they had a duty to "protect a young, helpless girl."[95] In a comparison of assaults by British employers on Indigenous servant men in India, and white female servants in England, Dussart finds that there was a "greater tolerance of acts of violence" towards the former. Masters convicted of assaulting their Indian servants received lenient punishments, and the victims did not garner much sympathy, while by contrast newspapers expressed "horror" at the abuse of young British servant girls. Dussart contends that race and gender both contributed to this differential treatment, noting that the "assaulted male servant did not possess the same vulnerability as the friendless, abused, young servant girl." She argues that the "maleness of Indian servants, as compared to British maids, underwrote the racial difference upon which the legitimacy of physical chastisement was predicated."[96]

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[93] See for example Vickery, "Golden Age to Separate Spheres," 383-414; Robert Shoemaker, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres?* (London: Routledge, 2013; orig. 1998); Clark, *The Struggle for the Breeches.*
[94] Tomes, "'Torrents of Abuse,'" 339-340.
[95] "Trial of Mr. and Mrs. Sloane," *The Morning Chronicle*, February 6, 1851, p. 7.
[96] Dussart, "'Strictly Legal Means,'" 166-167.

Thus, a belief in the vulnerability of female servants helps to explain why they were somewhat more successful than their male counterparts at prosecuting assault charges against their abusive employers. It is possible that this relative success encouraged female servants to bring their grievances before magistrates. Their overrepresentation as plaintiffs in assault accusations might therefore be a reflection of their expectation of a reasonably positive outcome to the proceedings, rather than a measure of their greater probability of being assaulted compared to male servants. However, it seems likelier that female servants were in fact assaulted proportionately more often than male servants.

The intersection of class and gender heightened female servants' chances of being abused. Conceptually, they were doubly subordinate. As servants, they were subordinate to their employers; as women, they were subordinate to men – to husbands and fathers, for example. The law – and society at large – sanctioned a certain degree of moderate 'correction' in the case of servants, wives, and children alike. Although the right of employers and of husbands to physically chastise their servants and their spouses was being challenged in the second half of our period, there remained a cultural conditioning to view female servants as fit objects of corporal punishment in both their capacities – as women and as workers.

Moreover, female servants had to contend with violence from both masters and mistresses. We have seen that female employers rarely assaulted workers of the opposite sex, if prosecutions are taken as a somewhat reliable indication. Male employers, on the other hand, were less sex-selective in their assaults. Thus, women workers had a proportionately greater chance than men of being assaulted no matter the sex of their employers. Furthermore, female servants were also vulnerable to sexual assault and exploitation from their masters to a much greater degree than their male counterparts, as the following section reveals.

Sexually Assaulted Servants

No male servants accused their employers of sexual assault in the sources for this dissertation. This does not necessarily mean that none were actually assaulted, of course. However, if they had been exploited or violated in a way that we would recognize as sexual assault today, there was hardly a legal framework in place at that time with which they could contextualize their experiences in court. The crime of rape was defined as a "*man* [having] carnal knowledge of a *woman*, by force, and against her will."[97] While women could be accessories to rape, they could not be charged with it themselves. Moreover, the rape victim was by definition female. Thus, a mistress could not legally rape her servant.

A man or boy who had been sexually assaulted by his master could in theory have brought a charge of sodomy. Penetrative homosexual activity had been illegal since 1533 when An Acte for the Punishment of the Vice of Buggerie was passed.[98] Technically, this offence carried the death penalty until 1861, when life imprisonment, or a minimum ten-year term, was substituted for hanging.[99] Yet a servant raped by his master might well have felt ashamed speaking about it in a cultural climate that considered sodomy 'unnatural' and 'the worst of crimes.' He also ran the risk of being accused of complicity in the felony. Thomas Alan King has argued that the eighteenth century saw a shift away from the prosecution of sodomy as an "*abusive* practice" to its punishment as the specific act of "anal penetration enjoyed *to ejaculation*, whether between adult men or between an adult man and a boy." Whereas in the sixteenth century, the jurist Sir Edward Coke had compared "buggery" to the rape of a woman,

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[97] Burn, *Justice of the Peace*, 21st ed., Vol. 5 (1810), 112. Emphasis mine.
[98] 25 Hen. 8 c. 6 (1533).
[99] 24 &25 Vict. c. 100 (1861). Sean Brady, *Masculinity and Male Homosexuality in Britain, 1861-1913* (Basingstoke: Palgrave Macmillan, 2005), 60-61, 96; Harford Montgomery Hyde, *The Other Love: An Historical and Contemporary Survey of Homosexuality in Britain* (London: Heinemann, 1970), 5.

by the eighteenth century Sir William Blackstone was maintaining that both parties involved in sodomy were feloniously culpable, provided they were over twenty-one years of age and therefore capable of consent.[100] These obstacles could have prevented male servants who had been sexually assaulted from coming forward to charge their masters.

However, even if there were unreported instances of sexual abuse committed against male workers, it is important to note that the vast majority of rape victims were women. Recent statistics from the United States show that approximately 91% of all rape victims are female. The 2013 *Overview of Sexual Offending in England And Wales*, a bulletin released jointly by the Ministry of Justice, Office for National Statistics, and Home Office, similarly reveals that between 2009 and 2012, 85,000 women reported being raped per year on average, compared to about 12,000 men, meaning that approximately 88% of all victims were female.[101] Because of the gendered nature of the crime, there is no reason to believe that these ratios were any different in the eighteenth and nineteenth centuries.

Feminist theories help to explain why the victims of rape were overwhelmingly women, then as now. Rape is a crime of "violence and power."[102] In addition to being a traumatic experience for individual victims – a "sexually invasive dehumanization," as Michelle Anderson puts it – rape is also an institution that underpins the subordination of women as a group to men as a group. In Rebecca Whisnant's words, rape is "not anomalous" but rather "paradigmatic" of "patriarchal cultures." It normalizes and sexualizes men's dominance of women by helping to

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[100] Thomas Alan King, *The Gendering of Men, 1600-1750: Queer Articulations*, Vol. 2 (Madison, Wisconsin: University of Wisconsin Press, 2008), 159-163.
[101] Lawrence A. Greenfeld, "Sex Offences and Offenders: An Analysis of Data on Rape and Sexual Assault," (Washington, D.C. U.S. Department of Justice, Bureau of Justice Statistics, 1997); "An Overview of Sexual Offending in England and Wales," Statistics Bulletin (London: Ministry of Justice, Home Office, and the Office for National Statistics, January 2013), 6.
[102] Susan Brownmiller, *Against Our Will: Men, Women, and Rape* (Pelican Books, 1986), 15.

perpetuate beliefs about "natural" sexual interactions: that they are an "act of male conquest," that men require sex, that men are "persistent and aggressive" while women are "reluctant and passive," and that women are "men's sexual objects or possessions." Thus, rape articulates and enforces "spurious beliefs about gender and sexuality" by means of "the violation and control of women's bodies."[103]

The institution of rape also allows men to control women by making them perpetually fearful. As Andrea Dworkin says, "women live in constant jeopardy, in a virtual state of siege." They are frightened by the threat of rape into complying with patriarchal norms. Bombarded with cautionary tales and warnings about rape, women come to see themselves as "pre-victim[s]," according to Ann Cahill. In fact, they are "*guilty* pre-victim[s]," since they are taught that women who are raped have brought it on themselves by failing in their "responsibilities of self-protection and self-surveillance" – for instance, by dressing too provocatively, by drinking too much, or by walking alone at night. Thus, in order to prevent their own rapes, women attempt to regulate their behaviour and restrain themselves in ways that conform to patriarchal ideals of feminine chastity, modesty, docility, and subservience. As Claudia Card puts it, women are "terrorized into compliance." The threat of rape is also a "protection racket." It fosters in women a sense of reliance on 'good' men who will putatively defend them from 'bad' men, and thereby benefits all men by positioning them as guardians to dependent and submissive

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[103] Rebecca Whisnant, "Feminist Perspectives on Rape," *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (Fall 2013 Edition), https://plato.stanford.edu/archives/fall2013/entries/feminism-rape/; Michelle Anderson, "All-American Rape," *St. John's Law Review* 79 (2005): 643; Susan J. Brison, *Aftermath: Violence and the Remaking of a Self* (Princeton: Princeton University Press, 2002), 98; Keith Burgess-Jackson, *Rape: A Philosophical Investigation* (Brookfield, VT: Dartmouth Publishing Company, 1996), 289; Andrea Dworkin, *Our Blood: Prophecies and Discourses on Sexual Politics* (New York: Perigee Books, 1976), 45-46; Jean Hampton, "Defining Wrong and Defining Rape," *A Most Detestable Crime: New Philosophical Essays on Rape*, ed. Keith Burgess-Jackson (New York: Oxford University Press, 1999),135.

females.[104] In short, women make up the vast majority of victims because rape is a tool of the patriarchy that shores up male supremacy.

While women from every class are now and were then victims of rape and sexual coercion, female servants in the period covered by this dissertation were perhaps particularly vulnerable. As Bridget Hill notes, they were for the most part young, unmarried, and isolated in unfamiliar households, away from the immediate protection of family and friends. Their sleeping quarters were usually lacking in privacy, and could rarely be locked, allowing easy access for predatory men prowling the house. Moreover, maids often had to perform intimate services for their masters, such as undressing them, which could open the door to sexual advances. The diarist Samuel Pepys, for example, found "ample opportunity" to proposition his maidservants as they put him to bed. Masters also controlled their servants' financial security and future employment prospects to a significant degree, since they could dismiss maids on "the slightest of excuses" or withhold character references. Hill remarks that young women faced with this pressure might not have had much choice but to "voluntarily" succumb to "insistent" masters.[105]

For instance, in Chapter Two we encountered the housemaid Ann Giles and cook Bethia Shillick, both of whom had been impregnated by their master, the farmer William Hilton. Their pregnancies overlapped, and they had each witnessed the other engaging in intercourse with Hilton, as their testimonies on one another's behalf at their respective bastardy examinations revealed. [106] It seems strange that Ann and Bethia would have affairs knowingly and willingly with the same man at the same time. Hilton was married, so he could not have enticed either of

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[104] Whisnant, "Feminist Perspectives on Rape"; Dworkin, *Our Blood*, 37; Ann J. Cahill, *Rethinking Rape* (Ithaca: Cornell University Press, 2001), 157-160; Claudia Card, "Rape as a Terrorist Institution," *Violence, Terrorism, and Justice,* ed. R.G. Frey and Christopher W. Morris (Cambridge: Cambridge University Press, 1991), 296, 300-304.
[105] Hill, *Servants*, 44-46, 48.
[106] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, February 21, 1846; May 30, 1846.

them with promises of matrimony. Perhaps the women were simply interested in a sexual relationship, although the consequences of this could be serious and life altering, as their pregnancies subsequently proved. Moreover, there were four other men working on the Hilton farm among whom Ann and Bethia might have chosen. It is possible that their married master was so irresistibly attractive to both of them that they were prepared to share him, with each other and his wife – though she was probably unaware of the situation. However, I contend it is more probable that the two servants felt coerced into sexual intercourse with Hilton. His frequent "connections" with Bethia and Ann, sometimes while both women were in the same bed, certainly suggest that he was "insistent."

Even if these particular servants had not been pressured into sex with their master, many others undoubtedly were. It was common, perhaps even routine, for women workers to be sexually assaulted and exploited by their employers. Deborah Oxley remarks that "sexual servicing and harassment" were regarded as "all part of the job" of domestic servants. She asserts that this industry was "renowned for its high level of abuse," which was "quaintly called 'seduction.'"[107] Hill also argues that "affairs" between servants and masters were "widespread," citing wives' petitions to the church, in which a husband's adultery with the maid was the second most frequent reason given after domestic violence for requesting a legal separation. While this evidence came from eighteenth-century France, Hill observes that the situation in England was undoubtedly similar.[108]

The records examined in this dissertation confirm that masters sexually assaulted their female servants. Six of the assault complaints made by female servants in the Pre-Sentencing Database, or 9% of all of them and 15% of those that they brought specifically against male

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[107] Oxley, *Convict Maids*, 52-53.
[108] Hill, *Servants*, 48.

employers, were explicitly sexual in nature. For instance, the servant in husbandry Martha Cornelius told Ralph Drake Brockman that she had escaped from her master George Bromley's house after he came into her bedchamber and attempted to rape her.[109] In Durham, George Man Jr. tried to "ravish" his maid.[110] In Suffolk, Mr. Middleton "debauched" his teenage servant Elizabeth Hackfield, "gave her the pox," and "refused to pay for a throrow [sic] cure."[111]

Complaints such as these would only have represented the tip of the iceberg when it came to the numbers of female servants who were sexually assaulted by their employers. According to the 2013 *Overview of Sexual Offending in England And Wales*, just 15% of modern survivors of sexual violence choose to report the incident to the police.[112] There is every reason to believe that their eighteenth- and nineteenth-century counterparts would have been equally reticent to make formal charges. Anna Clark states that even fewer rapes were reported to the authorities at that time than today.[113]

Victims faced many obstacles to reporting their assaults. Rape was a capital felony, but it had a notoriously low conviction rate of only 7 to 13%.[114] In his guidebook, Burn quoted Lord Chief Justice Hale's "general caution" that although "rape is a most detestable crime, and therefore ought severely and impartially to be punished with death…it is an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though never so innocent."[115] As this 'caution' hints, there was (and is) an unfounded but persistent concern that

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[109] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, July 9, 1781, p. 84.
[110] *Justicing Notebook of Edmund Tew*, 50.
[111] SuffRO, HA247/5/4, Devereux Edgar, 301.
[112] "An Overview of Sexual Offending in England and Wales," 6.
[113] Anna Clark, *Women's Silence, Men's Violence: Sexual Assault in England, 1770-1845* (London: Pandora, 1987), 15.
[114] Clark, *Women's Silence, Men's Violence*, 47.
[115] Burn, *Justice of the Peace*, new ed. by Thomas D'Oyly, Vol. 3 (1836), 724.

many rape accusations were made falsely and maliciously.[116] It is therefore not surprising that the veracity of plaintiffs' testimonies was often questioned. Burn included a whole paragraph citing circumstances that would cast doubt on the credibility of the victim, including failure to report the assault at the earliest possible opportunity and failure to cry out "when and where it was probable she might be heard by others."[117]

Clark draws attention to the bind in which many victims found themselves. A woman's chastity "defined her worth as a person." By prosecuting her rapist and therefore admitting to being 'unchaste,' a victim cast doubt on her own integrity and reliability as a witness. As middle-class reformers of the early nineteenth century promulgated an ideology of virtuous, modest femininity that included a stricture against women speaking publicly about sex, victims were increasingly reluctant to report their rapes for fear of tarnishing their reputations.[118] Moreover, servants who had been assaulted by their masters might have been particularly hesitant to prosecute, given their employers' position of power over them. For all of these reasons, it is likely that the sexual assault of female servants was even more common than the statistics presented here suggest.

As Clark notes, the women who came forward to prosecute were "exceptional in their bravery, anger, and ability to articulate their experiences."[119] They brought their grievances to magistrates in the expectation of some kind of justice, but it is debateable whether they received any. Paul Hastings argues that domestic servants who were raped by their masters usually "got

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[116] Laurie Edelstein, "An Accusation Easily to be Made? Rape and Malicious Prosecution in Eighteenth-Century England," *The American Journal of Legal History* 42 (1998): 351-352; Antony E. Simpson, "The 'Blackmail Myth' and the Prosecution of Rape and Its Attempt in 18th Century London: The Creation of a Legal Tradition," *The Journal of Criminal Law & Criminology* 77 (1986): 101-150.
[117] Burn, *Justice of the Peace*, new ed. by Thomas D'Oyly, Vol. 3 (1836), 721-722.
[118] Clark, *Women's Silence, Men's Violence*, 47, 59-63.
[119] Clark, *Women's Silence, Men's Violence*, 15.

little protection from the law," since sexual assaults were often regarded (and excused) as "'drunken impulses' or 'regrettable lapses of self control.'"[120] Clark points out that most rape accusations never progressed beyond a magistrate's court, even though rape, as we have seen, was a serious felony and could not be adjudicated summarily. She notes that many charges were simply dismissed by JPs, including 23.5% of those made in the Guildhall Justice Room between 1780 and 1796.[121]

None of the charges of sexual assault made by female servants in this dissertation went on to trial. In every case the presiding JP either discharged the plaintiff from her contract, facilitated an agreement between victim and assailant involving monetary compensation for the servant, or both. For instance, Ralph Drake Brockman let Martha Cornelius leave her service with George Bromley after he attempted to rape her because she told the magistrate she was afraid of returning to her master's house.[122] Montague Pennington "allowed" the "indecent assault" by Captain Fryer against his fifteen-year-old maid "to be made up" upon his paying the expenses of the proceeding and the girl's wages till Michaelmas, and giving her "a pound besides."[123] Similarly, when Pennington deemed that the conduct of Charles Quash toward his unnamed female servant had been "indecent and improper," in spite of the man's denials, the JP advised him to "make it up" to the girl by giving her a pound.[124] In Durham, Edmund Tew

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[120] Paul Hastings, "Crime and Public Order," *Government and Politics in Kent, 1640-1914*, ed. Frederick Lansberry, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 2001), 217.
[121] Clark, *Women's Silence, Men's Violence*, 50-53.
[122] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, July 9, 1781, p. 84.
[123] KHLC, U2639/O1, Montagu Pennington, September 20, 1831, p. 202.
[124] KHLC, U2639/O1, Montagu Pennington, January 1st, 1820, p. 136.

arranged for the matter of George Man Jr. trying to "ravish" his maid to be "made up" upon her discharge with a year's wages.[125]

These agreements can be viewed from one perspective as utter abdications of justice and from another as efforts at offering victims some practical assistance, as the case of fifteen-year-old Judith Spears helps to illustrate. She was the servant of a Kentish victualler named James Hoile, who, as she complained to Montague Pennington and his fellow magistrate Mr. Backhouse, "wanted her to go to bed with him when her mistress was out." She refused, so he "came into her chamber, unclad to his shirt, blew out her candle, and threw her on the bed and tried to ravish her." Judith resisted and cried out, and Hoile eventually left after struggling with her for some time. Although this description of events sounds violent enough, when Pennington asked the girl if her master "had offered violence to her," she replied that he had not, he had only offered her a crown. The victualler hotly denied the charge and brought two witnesses who were in the house at the time, but according to Pennington their evidence was "prevaricating and inconclusive." Nevertheless, Pennington was quick to add that the girl's "character…was not free from suspicion." Therefore he and Backhouse "allowed the matter to be made up, with a severe reprimand to Hoile." The victualler paid the expenses of the proceeding and gave the girl 7s 6d as well.[126]

On the one hand, it is clearly appalling that a man in a position of power over a young girl who attempted to rape her should be let off the hook with a reprimand upon paying his victim a modest sum. We do not know how Judith Spears felt about the outcome of her complaint. It might very well have sickened her and other women who had been sexually assaulted to see their assailants escape so lightly. Certainly rape and attempted rape were painful,

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[125] *Justicing Notebook of Edmund Tew*, 50.
[126] KHLC, U2639/O1, Montagu Pennington, December 21st, 1812, p. 61.

anguishing, and traumatic experiences for eighteenth- and nineteenth-century women just as they are for women today.[127] Victims were understandably angry and it is reasonable to assume that those, such as Judith Spears, who worked up the courage to charge their rapists and attempted rapists hoped to see them punished. During the trial of her assailant Ralph Cutler at the Old Bailey in 1777, Mrs. Mary Bradley, an auctioneer's wife, testified in court that after he had raped her she told him that "he had used [her] extremely ill," that "he had the wrong person to deal with," and that "he certainly would suffer for using [her] in the manner that he did."[128] Many women would no doubt have felt that a scolding from a magistrate and a token payment in compensation did not constitute adequate suffering for the men who attacked them.

On the other hand, the outcome of Judith Spears' complaint was more satisfactory than that of Mary Bradley. Bradley was grilled in painful and embarrassing detail about her rape. After she testified that Cutler had "effected his purpose, and did what he intended to do to [her], the judge insisted that she "must describe what he did to [her]" and pressed her on what she felt when "he had entered [her] body," which prompted her to respond that it was "a very disagreeable circumstance to mention." She explained that after the rape she was "exceedingly flurried and frightened," and went upstairs to check on her crying children before coming back down to the kitchen, where Cutler remained, to beg him to leave. At this point in her testimony the counsel for the defendant interjected, in a blatant attempt to re-frame the incident as a consensual affair: "So you went down again immediately to the object of your affection?"

The lengthy cross-examination of Mary Bradley was scathing. For instance, defence counsel asked why "it never entered [her] head to lock [herself] in to the room, and cry out for

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[127] Clark, *Women's Silence, Men's Violence*, 8.
[128] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, January 9, 2017), September 10, 1777, trial of Ralph Cutler (t17770910-21); Clark, *Women's Silence, Men's Violence*, 46.

help" once she had gone upstairs to the children. He also cast doubt on her subsequent actions. She testified that the following morning she had run into a relative of her husband's, who asked what was the matter because she "did not look in [her] countenance as usual." She told him what had happened the night before, and he invited her to "take a walk…in the afternoon, to have some more discourse…upon the matter." The defending counsel expostulated: "for God's sake what was the walk…for? For you had told him all you knew, that the man had lain with you; what was this scheme that was to be cooked up in the evening?" Counsel also questioned why she had not "thought of going then before a justice," asking sceptically whether she had "never heard that to commit such an outrage upon a woman was an offence punishable" or "that people usually applied to justices upon such an occasion." In the end, after Mary Bradley had been chastised, derided, and disbelieved, the jury found Ralph Cutler not guilty.[129]

As Clark observes, this type of humiliation of a victim was typical in rape trials. Judges, juries, lawyers, and spectators in the courtroom were "obsessed" with hearing all the lurid details of a rape, partly out of prurient curiosity, partly out of a "patriarchal concern with chastity." Judges and defence counsel could be sarcastic and flippant to victims, as they were in Mary Bradley's case. Moreover, judges readily permitted testimony "impugning a woman's reputation." Any hint that she had been drinking with male acquaintances, for example, often resulted in "instant verdicts of not guilty despite conclusive evidence of rape." Notably, Mary Bradley had been playing skittles with Ralph Cutler at a pub before he walked her home and assaulted her. Clark emphasizes that the intense focus on the character of the victim in rape cases

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[129] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, January 9, 2017), September 10, 1777, trial of Ralph Cutler (t17770910-21); Clark, *Women's Silence, Men's Violence*, 46.

was in direct contrast to the usual focus in eighteenth-century courts on the character of the accused.[130]

Given the humiliating experience of a rape trial and the low odds of securing a conviction, the most desirable outcome of a sexual assault charge might have been an agreement facilitated by a magistrate between the servant and her master after all. Yet we should not discount the possibility that it might have been almost as mortifying as it was in a trial setting for a servant to have her reputation maligned in a summary court, as when Pennington remarked that Judith Spears' character was "not free from suspicion." A generous interpretation of Pennington's comment is that he realized her behaviour, as a young working woman, would not conform to the "restrictive upper-class standards" of femininity by which the courts judged rape victims, and he wanted to spare her the shame of being discredited in front of a jury and audience.[131] Pennington was a man of his time, though, and on another occasion he recorded that he and the other JPs at a Wingham petty sessions meeting had dismissed a complaint about attempted rape because it appeared "to be only rustic gallantry, and the Girl had voluntarily put herself in the way of it."[132] In other words, Pennington was not immune to the general distrust of rape victims' claims.

At least in the magistrate's parlour, however, it was less likely that there would be throngs of spectators to witness a servant's discomfiture. Nor would an account of the ordeal appear in newspapers or trial transcripts pedalled as "titillating literature."[133] Furthermore, the discharge of the servant from an abusive situation or the payment of a small compensatory sum by the master, however inadequate a punishment for the crime, were still preferable outcomes to

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[130] Clark, *Women's Silence, Men's Violence*, 54-58.
[131] Clark, *Women's Silence, Men's Violence*, 56.
[132] KHLC, U2639/O1, Montagu Pennington, August 10th, 1819, p. 133.
[133] Clark, *Women's Silence, Men's Violence*, 54.

a verdict of not guilty. It is worth noting as well that whatever his reservations about her trustworthiness, Pennington nevertheless believed Judith Spears' accusation enough to recommend that her master 'make it up' with her. Hoile, her employer, flatly denied the charge and brought two witnesses to exculpate him, and still Pennington did not dismiss this case, though we have seen that he was willing to dismiss complaints of sexual assault in other situations. Every instance of a JP arranging an agreement between a servant and her assailant can be taken as a modest affirmation of a victim's credibility.

Thus, it is a complex question whether or not female servants received any justice when they reported their masters' sexual assaults. Certainly Clark is correct in observing that they faced a "corrupt legal system constructed to benefit those who were rich and male;" a system, moreover, that "cared little for the integrity of women's bodies" and increasingly privileged "public morality" over the "protection of women."[134] There was only a slim chance that their rapists or would-be rapists would even stand trial, let alone be convicted. If this is the only outcome that would have signalled some modicum of justice being carried out, then these women generally received none. Yet, perhaps the servants who approached magistrates with their complaints, often very young and vulnerable, would have been satisfied in some measure just to be liberated from their assailants' homes, or offered some money, or even simply to be believed by a person in authority. Nevertheless, it is incontestably an indictment of the legal system that the victims of sexual violence had to content themselves with such poor restitution, while their attackers too frequently escaped any punishment at all.

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[134] Clark, *Women's Silence, Men's Violence*, 50, 58, 66.

Servants Who Assaulted Their Masters

There was a far greater chance of an employer assaulting a servant than of a servant assaulting an employer, if the shares of prosecutions brought by each group are a reliable indication. We have seen that servants were plaintiffs in 189 assault cases in the dissertation, or 83% of them. Since it is more probable that assaults against servants would be underreported than assaults against masters, the statistics are likely a fairly accurate representation of reality. Servants might have been frightened or coerced out of bringing assault charges by employers who held power over them. Moreover, since society and the law granted masters considerable leeway to 'correct' their workers, many servants might have accepted a fair amount of abuse as normal and not bothered to go before a magistrate. Servants were certainly assaulted more often than prosecutions suggest.

Conversely, masters had less incentive to underreport the assaults made against them by their workers. In the power imbalance of the employment relationship, they had the upper hand. Thus, they would have been less likely not to charge their assailants out of a sense of intimidation. Some employers might have chosen to dismiss a violent servant rather than prosecute, but they ran the risk of being charged with breach of contract. As we saw in Chapter One, it was not until the early nineteenth century that high court judges began expanding masters' rights to dismiss servants on their own authority without recourse to a justice (except in cases of pregnancy). Lord Mansfield determined in 1773 that a mistress could not take it upon herself to dismiss a wet nurse for violent fits of passion. Twenty years later, Lord Kenyon

affirmed that an employer still had to apply to a magistrate to discharge a servant who had committed a crime.[135]

Furthermore, the law took workers assaulting their masters much more seriously than masters assaulting their workers, giving employers motivation to prosecute. Section 21 of the Statute of Artificers stipulated that servants who "wilfully or maliciously [made] an assault or affray" upon their masters or mistresses could be imprisoned summarily by two justices for up to a year.[136] This provision was enacted at a time when the most common penalty for assault was a fine.[137] It was not until 1828, with the passage of 9 Geo. 4 c. 31, the Offences Against the Person Act – one of Peel's Acts aimed at simplifying and consolidating the criminal law – that Section 21 of the Statute of Artificers was repealed and servants' assaults on their employers became subject to the same punishments as those "committed by other persons." Section 25 of the Offences Against the Person Act still specified, though, that anyone convicted of an assault "in pursuance of any conspiracy to raise the rate of wages," as well as those who intended to commit a felony, could be sentenced to a term not exceeding two years, with or without hard labour, in the common gaol or house of correction.[138]

Since employers, unlike servants, were encouraged to prosecute, it does not seem likely that there was a large 'dark figure' of unreported assaults made against them. Servants simply did not attack their employers as frequently as they were themselves beaten and abused. Assault accounted for just 2% of all the charges brought against female and male servants in the Pre-Sentencing Database, or 7 and 31 of them respectively. In the Post-Sentencing Database, only

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[135] *Temple v. Prescott* (1773), cited in Caldecott, p. 14-15, n.(c); *R. v. Inhabitants of Sutton* (1794), 5 T.R. 657, 101 Eng. Rep. 366.
[136] Burn, *Justice of the Peace*, 24th ed., Vol. 5 (1825), 128.
[137] Burn, *Justice of the Peace*, 4th ed., Vol. 1 (1757), 94.
[138] Smith, *Treatise on the Law*, 256.

three male workers and one female worker, or less than 1% of all the inmates of each sex, were charged with assault. Women workers were proportionately just as likely (or unlikely) as men to be defendants in assault cases. They also accounted for 18% of workers charged with assault in the Pre-Sentencing Database, the same share they made up of defendants overall. They were not overrepresented among the accused as they were among the plaintiffs in assault cases, but nor were they underrepresented.

	Female Servants	Male Servants
Female Employer	7 (100%)	0 (0%)
Male Employer	0 (0%)	31 (100%)
Total	**7**	**31**

Table 4.6 – Gender of Employers Assaulted By Servants of Each Sex in Both Databases
This table includes all of the cases of assault brought against male and female servants in both the dissertation's databases. The percentages in parentheses indicate the shares of all assault charges brought against servants of that sex made up of cases initiated by employers of each sex.

Mistresses, on the other hand, were overrepresented – not only as defendants in assault cases, as we have seen, but also as plaintiffs. Though they were only complainants in 83 cases in the Pre-Sentencing Database, or 5% of them, they accounted for 7 plaintiffs, or 21% of them, in assault charges specifically. The explanation for this overrepresentation lies in the fact that while female servants made up the same share of defendants in assault charges and employment disputes overall, mistresses were plaintiffs in 46, or just 15%, of the latter cases, but 100% of the former. Table 4.5 shows that female servants exclusively assaulted female employers – or at least were exclusively prosecuted by them. Mary Speering, for example, accused her apprentice Ann Wallow before Devereux Edgar of being disorderly and beating and abusing her.[139] In Gloucestershire, Susan Sanders struck her mistress Mrs. Elizabeth Jones "a blow on the head with a saucepan" after she ordered her to leave one Saturday.[140] Even when a husband and wife

[139] SuffRO, HA247/5/4, Devereux Edgar, 31.
[140] GA, PS/CH/M/1, Cheltenham Petty Sessions, February 3, 1835.

jointly brought a complaint against a female servant, the assault was invariably against the mistress. For instance, Mytton Skrymsher and his wife charged Ann Cheshire before the Shropshire JP Edward Harries with "divers misdemeanours, miscarriages, and ill behaviour" – namely her refusal to obey their lawful commands and an assault on her mistress.[141]

It is possible that female servants were assaulting their masters, but the incidents went unreported. Beattie has speculated that husbands whose wives abused them were probably "especially reluctant" to charge them in court, because this "too openly and clearly reversed a husband and wife's expected relationship."[142] A master was supposed to have dominance over a servant the same way a husband did over his wife. Moreover, women were supposed to be subservient to men. A master who had been assaulted by a female servant might have been too ashamed to confess before a magistrate that he had doubly 'failed' at asserting his authority, both as an employer and as a man.

However, the number of unreported instances of female servants assaulting their masters was probably not that large in reality. As we have seen, women were in general much more likely to assault other women.[143] Moreover, men may not have been as ashamed of being assaulted by women as historians expect. When they reported these assaults, they admitted without seeming embarrassment not only that their assailant was female, but that the attack had been fierce and they had been overcome. For instance, John Smith charged William and Elizabeth Powell with assault at the Old Bailey, recounting that after he and William had struggled together and fallen down, Elizabeth had come up, said 'Let him go,' and "struck [him] on the head." He then "felt a sharp prick, which ran a terror through [him], and [he] let go, and

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[141] SA, QS/10/2, Calendar of prisoners, 1786-1817, October 4, 1808, Calendar No. 17, Prisoner 32, p. 4.
[142] Beattie, "Criminality of Women," 87.
[143] Hurl-Eamon, *Gender and Petty Violence*, 70.

found blood streaming down [his] head."[144] Of course, building up the assault was also strategic. In her study of petty violence in early modern London, Hurl-Eamon found that male assault victims readily emphasized their own weakness and the wounds they had received, the same way that female assault victims did, since it helped to strengthen the case against their assailants.[145] John Smith's witness conceded that the head wound gushing blood was "superficial" and "might have been done by a finger nail," so Smith's account was perhaps exaggerated. Nevertheless, he had not been too mortified to charge Elizabeth Powell with the assault. In fact, he allowed under cross-examination that the injury "might have been done by accident by William Powell." With the option of accusing a male assailant, Smith still chose to prosecute the woman.

Similarly, police constables charged women with assaulting them in the course of their duties, even when men were also involved. Three constables prosecuted a group of five people – three men and two women – after a fight broke out following the attempt of one of the constables to take one of the men into custody. Constable Charles Stenner described how in the course of the mêlée Julia and Margaret McCarthy "knocked [him] about the head, and kicked [him] several times." Constable William Kenny testified that Margaret had "struck [him] on the back of the head…with a stone" and "bit [him] in the left hand," observing that he still bore the mark. Thomas Knight, a hackney-carriage attendant who had tried to intervene to assist the constables, deposed that Margaret had struck him in the face and knocked him down.[146] None of these men sounded particularly discomfited at having been assaulted by women. Neither did John Reeves, the master who, as we have seen, defended himself from his servant Esther Brooks' accusation

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[144] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, January 9, 2017), October 23, 1871, trial of Elizabeth Powell and William Powell (t18711023-761)
[145] Hurl-Eamon, *Gender and Petty Violence*, 24.
[146] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, January 9, 2017), October 24, 1864, trial of John McCarthy, Orlando Masalini, George Furlough, Julia McCarthy, Margaret McCarthy (t18641024-968)

that he had dragged her off her milking stool and bloodied her nose by countering that she had flung a stone at him and threatened to strike him.[147] While Reeves did not charge Esther with assault, he still maintained in front of a magistrate that she had abused him.

It is possible that more assaults by male servants against female employers went unreported than assaults by female servants against male employers. Table 4.5 shows that male servants, like their female counterparts, only assaulted – or were only prosecuted by – employers of the same sex as themselves. For instance, William Henden of Kent struck his master Mr. Taylor with a pitchfork.[148] Although men, as we have seen, were more likely to assault other men than they were to assault women, they nevertheless assaulted women more frequently than women assaulted men. We might therefore expect that male servants would assault their mistresses proportionately more often than female servants assaulted their masters, yet no mistresses brought charges against male servants in the dissertation's sources.

However, in some unrelated cases there are incidental mentions of assaults made by male servants against mistresses, or at least female members of their masters' families. William Powell of Shropshire was imprisoned with hard labour for two months for "using very abusive language, and striking his fist through the window" of his master Thomas Bates' dwelling house, as well as hitting Bates' two young daughters and knocking out the tooth of the eleven year old.[149] When Mr. Castle came before Montague Pennington to be parted by mutual consent from his servant Thomas Holmes, Pennington noted that he abated Holmes' wages by 10 shillings after hearing about his "ill conduct, swearing at and abusing his mistress." It is unclear whether the abuse was verbal or physical. Its pairing with the accusation of swearing suggests the former.

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[147] GA, PS/CH/M/1, Cheltenham Petty Sessions, 1834-1835; April 11, 1835.
[148] BL, MSS Add. 42598, William Brockman, July 2, 1716, p. 132.
[149] SA, QS/10/1, Calendar of Prisoners, 1786-1800, October 6, 1789, No. XXI, Prisoner 15, p. 3.

On the other hand, Pennington remarked that had the grievance "been made first," before the application for the discharge, he "should have sent [Holmes] to the House of Correction."[150]

This case raises the possibility that assaults on mistresses might not always have been taken seriously enough to prosecute. Castle did not bring Holmes before a magistrate to charge him with abusing his wife, but rather to dissolve the contract. However, he did bring up Holmes' abusive behaviour, even if it was only to get the man's wages abated. The abuse might even have been the reason Castle wanted to dismiss Holmes. Moreover, it does not seem likely that mistresses would have taken male servants' violence less seriously than that of female servants, whose assaults they did prosecute, as we have seen. Rather, male servants probably did not assault their mistresses very often, for the same reason that mistresses did not frequently assault male servants. The majority of male workers in this dissertation were labourers in husbandry, industry, and the trades, not domestic servants. They would have been more likely to work for, and be supervised by, other men, giving them fewer opportunities to get into violent disputes with mistresses.

Outcome	Female Servants	Male Servants
Agreed	0 (0%)	2 (7%)
Acquitted	0 (0%)	1 (3.5%)
Discharged (with or without fine)	0 (0%)	3 (11%)
Dismissed Charge	1 (16.6%)	0 (0%)
Fine/Financial Penalty	1 (16.6%)	5 (18%)
House of correction	1 (16.6%)	6 (21%)
Returned to service	0 (0%)	2 (7%)
Summons or warrant issued	3 (50%)	8 (29%)
Not Recorded	0 (0%)	1 (3.5%)
Total	**6**	**28**

Table 4.7 – Outcomes of Assault Charges Brought Against Male and Female Servants in the Pre-Sentencing Database
The percentage in parentheses refers to the share that the particular outcome makes up of all assault charges against servants of that sex.

[150] KHLC, U2639/O1, Montagu Pennington, March 25, 1824, p. 164.

Unsurprisingly, given the provision in the Statute of Artificers for the imprisonment of servants who assaulted their masters, they were treated more severely than masters who assaulted their servants. For instance, Montague Pennington sentenced the "insolent" waggoner James Langwell to twenty-eight days in the house of correction, bearing his own expenses, for assaulting and abusing his master "in the most outrageous manner" and refusing to do his work, all of which he freely acknowledged in the summary hearing.[151] As Table 4.6 reveals, male and female workers alike – though particularly the latter – were imprisoned proportionately more often for assault than they were for employment disputes overall, being incarcerated in 21% and 17% of assault cases (though these shares were made up of just 6 cases and 1 case respectively). We have previously seen that male and female servants were imprisoned in 19% and 12% of all employment conflicts. Technically, female servants also made up a larger share of assault prisoners – 17% – than they did of imprisoned workers in general – 12%. However, the number of women workers charged with assault was so small that a solitary female servant being sent to the house of correction – Helen Holmes, who abused her mistress Susan Alderton and called her a "whore bitch" – was sufficient to create this overrepresentation.[152]

There were also three servants in the Post-Sentencing Database who had been imprisoned for assault. In Gloucestershire, twenty-four-year old John Rilminster was incarcerated for twelve days for beating his master John Morse.[153] The apprentice Samuel Wynn was committed for one calendar month with hard labour to the house of correction in Shrewsbury for beating and *maiming* his master Isaac Clark.[154] Daniel Moreton of Buckinghamshire, who had assaulted his master Richard Baily, received the harshest punishment of all three. He was imprisoned for two

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[151] KHLC, U2639/O1, Montagu Pennington, January 31, 1814, p. 78.
[152] SuffRO, HA247/5/4, Devereux Edgar, 363.
[153] GA, Q/Gc/9/1, Register of Summary Convictions, Prisoner 77.
[154] SA, QS/10/1, Calendar of Prisoners, 1786-1800, No. XLII, Prisoner 22, p. 3.

months. During his term, he spent twenty-four hours confined in a solitary cell once a week.[155] The sentencing magistrate was Thomas Backhouse, a "retired Indian officer" who seems to have been a stern and uncompromising man with a taste for seclusion. When he died nine years later at the age of 87, he was buried, according to his wish, in a small pyramid-shaped tomb he had built out of flints and bricks in a fir plantation near his residence. He had vowed "he would have nought to do with church or churchyard, but lie, with his good sword by his side, in his own wood on the hill, and there defy all the assaults of the evil spirits in existence." He was sepulchred there upright in a coffin for seven years before his son, "having no sympathy for his sire's fancy for isolation," moved his father's remains to the parish churchyard at Great Missenden.[156]

Despite the relative severity of servants' punishments for assault in comparison with employment offences overall, they were still not as harsh in practice as the law allowed in theory. Of course, as Table 4.6 shows, 9 of the cases involving male servants in the Pre-Sentencing Database, or 32% of them, and 3 of those involving female servants, or half of them, ended inconclusively. These workers might have wound up in the house of correction as well. Still, none in my sources were committed for anywhere close to a year, which was the maximum sentence stipulated in the Statute. Moreover, in spite of the provision for imprisonment, servants who assaulted their employers faced a wider range of outcomes than just incarceration.

A fine was the next most common penalty after a stint in the house of correction. For instance, James Doogan was fined 10 shillings and the expenses of the proceeding at the

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[155] CBS, QSC/1/1, Calendar of Prisoners, Easter Sessions 1791.
[156] Robert Gibbs, *Worthies of Buckinghamshire and Men of Note of that County* (Aylesbury: Robert Gibbs, 1888), 24; James Joseph Sheahan, *History and Topography of Buckinghamshire, Comprising a General Survey of the County, Preceded by an Epitome of the Early History of Great Britain* (London: Longman, Green, Longman, and Roberts, 1862), 179.

Cheltenham petty sessions after he struck his master John Baker "several blows." Doogan had first "greatly insulted and abused" Baker, who told him to leave the premises, at which point Doogan launched his attack. The magistrates specified that if he failed to pay the penalty, he would be committed to Northleach for one month.[157] A fine might also accompany a discharge, which was the third most common punishment of male servants. Nicholas Farr, for example, was discharged and fined 1 shilling after accosting his master John Lanafield about his wages, declaring "Damn you, I've…got you at last," and then attempting to strike him "without any provocation."[158]

Technically, female servants had the charges against them dismissed 17% of the time, though as with imprisonment, this share was comprised of a single case. Emma Powell complained at the Cheltenham petty sessions that her servant Mary Ann George had been nursing her infant improperly, and she had "desired her not to do so." Afterwards, Mary Ann brought her mother over and the two of them pushed Mrs. Powell violently against the wall and bruised her arm. Rebecca Gardner, a witness to the altercation, testified that she watched the mother and daughter "serve Mrs. Powell shamefully and push and shake her in the passage," and another onlooker, Sophia Salmon, corroborated this evidence. However, a witness for the defence, Matilda Sparrow, swore that Mrs. Powell had bitten Mary Ann's shoulder and torn her shawl. Presumably unable to decide which party was most at fault, the presiding justices dismissed Mrs. Powell's grievance.[159]

These outcomes suggest that magistrates did not generally take workers' assaults on their employers as seriously as the letter of the law did. In many cases, they likely viewed and treated

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[157] GA, PS/CH/M/1, Cheltenham Petty Sessions, September 6, 1834.
[158] KHLC, U951/O5, Sir Edward Knatchbull, November 27, 1819.
[159] GA, PS/CH/M/1, Cheltenham Petty Sessions, August 9, 1834.

these assaults as just more instances of misbehaviour in the employment relationship, the way they often did with thefts, as we saw in the previous chapter. Complaints about assault might be included in more general grievances about the servant's conduct. For example, Mr. Davis brought his servant Stephen Sutton before Montague Pennington for abusing him and refusing to obey his orders.[160] William Andrews also complained to the justice Thomas Thornton that his servant Robert Holland was "disobedient to his commands" and struck him when they were out in the field together.[161] Assault might be a more egregious form of disobedience, but it was part of a continuum of defiant behaviour. Magistrates tended to treat it as such.

Servants Assaulting Animals

Another form of violent behaviour was the injuring of masters' animals. A typical complaint was that of Joseph Egerton of Hampshire, who charged his servant John Yates with beating and ill-treating his horse.[162] While horse theft had been a capital crime without benefit of clergy since 1547, it was only in the period of this dissertation that violence against animals began to be criminalized by Parliament.[163] The statute 22 & 23 Car. 2 c. 7 (1670) made it a transportable felony to "*maliciously*, unlawfully, and willingly kill or *destroy* any horses, sheep, or other cattle" and a trespass worth treble damages to "*maim, wound, or otherwise hurt*" them.[164] Then 9 Geo. I c. 22 (1723), the notorious Black Act, upgraded the malicious killing, maiming, and wounding of these animals to non-clergyable capital offences.[165]

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[160] KHLC, U2639/O1, Montagu Pennington, December 19, 1825, p. 172.
[161] NRO, Th 1679, Thomas Thornton, September 13, 1703.
[162] HALS, 50M63/C1, Basingstoke Petty Sessions, August 10, 1791.
[163] 1 Ed. 6 c. 12 s.10 (1547).
[164] 22 & 23 Car. 2 c.7 (1670); quoted in Burn, *Justice of the Peace*, 22nd ed., Vol. 1 (1814), 480; emphasis in original.
[165] 9 Geo. 1 c. 22 (1723).

Carl Griffin notes that the Black Act was the first statute that was "actually extensively used to prosecute those who attacked animals." Yet the Act was designed to stamp out revenge enacted on animals as proxies, rather than the actual barbaric treatment of the animals themselves. At least, that was the way it was subsequently interpreted in the high courts.[166] In 1789, Justice Heath declared that it was necessary in order for a maiming to fall under the Black Act to prove that it had been done "from some malicious motive towards the owner of [the animal], and not merely from an angry and passionate disposition towards the beast itself." Thus, a man who had maimed the prosecutor's cow by running a "sharp-pointed stick quite through her body" because she would not "stand quiet" as he "attempted to commit beastiality with [her]" could not be convicted under the Black Act.[167]

It was not always easy to determine whether a maiming was malicious, however. The following year, the Middlesex farmer Richard Bond prosecuted his servant John Shepherd under the Black Act at the Old Bailey for severing his gelding's tongue. Apparently Shepherd had entreated Bond to let him use another horse named Boxer to drive in the team instead of this gelding. Shepherd was holding the gelding by the tongue with one hand and beating him violently over the head with his whip. Bond remonstrated with him for the "barbarity of his conduct," and "in the heat of his passion" Shepherd declared that he would do the gelding "an injury if his master did not let him have Boxer to go in the team." The jury had to consider whether Shepherd then cut off three inches of the gelding's tongue out of "personal revenge" against his master or because of "some sudden passion against the gelding itself, excited perhaps

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[166] Carl Griffin, "Animal Maiming, Intimacy and the Politics of Shared Life: The Bestial and the Beastly in Eighteenth- and Early Nineteenth-Century England," *Transactions of the Institute of British Geographers* 37 (2012): 308.
[167] *R. v. Pearce* (1789), 1 Leach 527, 168 Eng. Rep. 365; Burn, *Justice of the Peace*, 29th ed., Vol. 1 (1845), 533.

by some act of viciousness, or by its intractable disposition." If they believed Shepherd had done it for the latter reason, the jury could not legally find him guilty under this statute, "however savage and cruel his conduct might appear." Shepherd was acquitted."[168]

It was only in 1822 that Parliament passed a statute penalizing cruelty to animals themselves. This was 3 Geo. IV c.71, commonly referred to as 'Martin's Act' after Colonel Richard "Humanity Dick" Martin, the Irish politician and animal welfare campaigner who introduced the bill.[169] In order to "prevent the cruel and improper treatment of cattle," Martin's Act made it a misdemeanour to "wantonly and cruelly beat, abuse, or ill-treat any horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep, or other cattle." Magistrates could summarily fine offenders and sentence them to the house of correction if they failed to pay.[170] In 1835, Parliament repealed Martin's Act and replaced it with a more sweeping statute that also covered bulls (which had not been included in 3 Geo. IV c. 71), dogs, and other domestic animals, as well as injuries that resulted from "negligence or ill usage" in driving.[171]

The maiming of an animal that was not done out of malice toward its owner was still not considered an indictable offence at common law. When Daniel Ranger was convicted at the Surrey Summer Assizes in 1798 of maiming William Collyer's black gelding, the judges subsequently agreed that unless a case fell within the Black Act, "the fact, within itself, was only a trespass."[172] This was "remedied" in 1827 when Parliament passed 7 & 8 Geo. IV c. 30, the Malicious Injuries to Property Act. In addition to downgrading the felony of killing, maiming, or

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[168] *R. v. Shepherd* (1790), 1 Leach 539, 168 Eng. Rep. 371.
[169] Griffin, "Animal Maiming," 308; Richard D. Ryder, "Martin, Richard (1754-1834)," *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004), online edn, May 2008 [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/18207, accessed 10 Feb 2017].
[170] 3 Geo. IV c. 71 (1822); Burn, *Justice of the Peace*, new ed. by Thomas D'Oyly, Vol. 3 (1836), 122-123.
[171] 5 & 6 Will. 4 c. 59 s. 2; Burn, *Justice of the Peace*, 29th ed., Vol. 1 (1845), 536.
[172] *R. v. Ranger* (1798), 2 East P.C. 1074; Burn, *Justice of the Peace*, 24th ed., Vol. 1 (1825), 554.

wounding "any cattle" from a capital offence to one punishable by transportation or imprisonment, this Act also did away with the burden of proving "express malice." It could now be presumed that any killing, maiming, or wounding that appeared to have been done deliberately was also done maliciously.[173] Yet there remained the difficulty of determining what exactly constituted maiming or wounding under these statutes.

In 1828, the case of Owen Owens came before the Denbigh Spring Assizes. He had poured nitrous acid into the left ear of a mare belonging to Thomas Davies. Some of the acid ran into her eye and immediately blinded her. She lived "in extreme pain" for ten more days and then Davies "stuck [her] with a knife" and let her bleed to death "to put her out of her misery." The indictment against Owens consisted of four counts, the first two for killing the mare, generally and by the specific means of pouring acid into her ear, the third for maiming the mare, and the fourth for wounding her, both against the form of the statute 7 & 8 Geo. IV c. 30 (1827). Since two surgeons testified that the injuries done to the ear, which was produced at the trial, "were not wounds but ulcers, though such ulcers would have turned to wounds," and the acid had not been "the proximate and immediate cause" of the mare's death, the jury was recommended to find Owens guilty on the third count and acquit him on the others, which they did. Then the case went before the high court for the judges' opinion on whether the injury done to the mare's eye qualified as a maiming within the meaning of the statute. The judges agreed that it did.[174]

Poisoning did not fall under the statute, however. Beginning with the 28th edition published in 1837 by Joseph and Thomas Chitty, Burn's *Justice of the Peace* advised that poisoning a horse, "however maliciously done, is no felony, and not within the act, unless the horse die, the words of the act being '*kill, maim*, or *wound*.'" Instead, the offender could be

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[173] 7 & 8 Geo. IV c. 30 s.16 and 25; Burn, *Justice of the Peace*, 29th ed., Vol. 1 (1845), 533.
[174] *R. v. Owens* (1828), 1 Mood. 205, 168 Eng. Rep. 1242.

indicted for the misdemeanour of attempting to commit a felony.[175] Thomas Chitty, who edited the section on "Cattle," did not cite any legal decisions in support of this contention. However, it must have been common knowledge because seven years earlier the defendant in *R. v. Mogg* (1830), a man who had mixed "a certain deadly poison" – sulfuric acid – into the corn he gave to eight horses, had been indicted for the misdemeanour of attempting to feloniously kill them. Mogg was incidentally found not guilty because the jury doubted whether his intention in feeding the horses acid was the one imputed in the indictment. They believed he might have done it "under the impression that it would improve the appearance of the horses" since a veterinarian admitted under cross-examination that grooms sometimes gave horses sulfuric acid to make their coats shine.[176]

Outcome	Number and Share of Servants
Abated Wages	2 (14%)
Discharged (with or without abated wages/fine)	4 (29%)
Case Dismissed	2 (14%)
Fine	1 (7%)
House of Correction	3 (21%)
Not Recorded	1 (7%)
Warrant Issued	1 (7%)
Total	**14**

Table 4.8 – Outcomes of Charges of Animal Cruelty Against Servants in Pre-Sentencing Database

Half of the cases of cruelty in this dissertation took place before and half after the passage of Martin's Act making the ill treatment of animals *qua* animals a summary misdemeanour. Although it is difficult to determine with a small sample size of only 14 cases in the Pre-Sentencing Database, it does not seem that the Act made an appreciable difference in the way they were handled. We might expect to see an increase in fines, but as Table 4.7 shows, only one

[175] Burn, *Justice of the Peace*, 28th ed., Vol. 1 (1837), 589.
[176] *R. v. Mogg* (1830), 4 Car. & P. 364, 172 Eng. Rep. 741.

of the fourteen offenders was fined (without also being discharged), and that occurred in 1810.[177] Servants were very slightly more likely to be imprisoned after the passage of the Act – two of the three incarcerations for animal cruelty in this database happened after 1822. Yet under the terms of the statute, offenders should only have been committed to the house of correction in the event that they failed to pay their fine. The servants in my sources were imprisoned summarily for the offence itself, as they had been prior to the Act's passage as well. In 1823, for example, Montague Pennington and Mr. Leith sentenced John Fagg to a month of hard labour in the house of correction for "brutal behaviour" to his master's horse, the same way Pennington and his fellow JPs had sentenced another servant for "cruelty" to a horse in 1820 at the Wingham petty sessions.[178]

Perhaps in April 1823 Pennington was not yet familiar with Martin's Act and did not realize that the appropriate statutory penalty for Fagg's offence was a fine. It was only five months later, in September, that the law gained some notoriety (and ridicule) when Martin himself prosecuted an itinerant green grocer named Thomas Worster at Guildhall for brutally beating a donkey with a hard leather strap and iron buckle. Martin allegedly brought the donkey into the courtroom to display its wounds. Upon Worster's promising never to beat the poor animal again, Martin paid half the man's fine himself. The incident was reported in newspapers and satirized in a popular comic ballad about a cruel man named "Bill Burn" whose "donkey was ordered into court,/ In which he caused a deal of sport;/ He cock'd his ears, and ope'd his jaws,/ As if he wished to plead his cause…The ass got a verdict – Bill got fined." Fifteen years later, this song even became the subject of a humorous painting by Paul Mathews, presented at the

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[177] KHLC, U2639/O1, Montagu Pennington, December 20, 1810, p. 26.
[178] KHLC, U2639/O1, Montagu Pennington, April 1, 1823, p. 158; February 1, 1820, p. 137.

Hagley Bazaar (see Figure 4.2).[179] Given the publicity surrounding Worster's prosecution and its enduring relevance in popular culture, the magistrates of the Cheltenham petty sessions should have been well aware of Martin's Law in 1835 when they sentenced Thomas Smith summarily to three calendar months in Northleach for having drunkenly "occasioned the breaking of a horse's thigh," as a result of which recklessness Smith's master John Wanklin was "obliged to kill" the animal.[180] It seems that magistrates continued to sentence offenders who injured animals as they pleased, regardless of the exact strictures of the law.

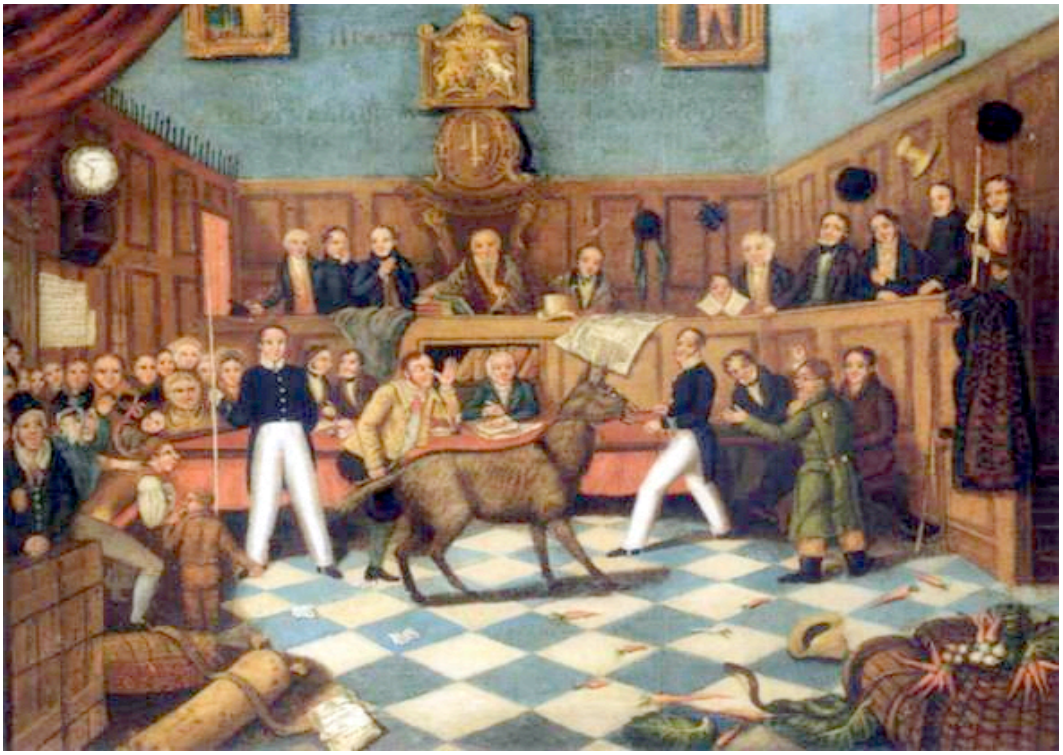

Figure 4.2 – "The Trial of Bill Burn Under Martin's Act," Painting by Paul Mathews, 1838
Source: http://www.wikigallery.org

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[179] "Guildhall – Cruelty to Animals," *Morning Chronicle*, September 3, 1823, 4; Kathryn Shevelow, *For the Love of Animals: The Rise of the Animal Protection Movement* (New York: Henry Holt and Company, 2008), 260-264; Edward G. Fairholme and Wellesley Pain, *A Century of Work for Animals: The History of the R.S.P.C.A, 1824-1924* (New York: E. P. Dutton, 1924), 33-34; "Mr. Mathews's Picture," *Worcestershire Chronicle*, August 2, 1838, 4.
[180] GA, PS/CH/M/1, Cheltenham Petty Sessions, 1834-1835, May 2, 1835.

Thomas Smith's drunken breaking of a horse's leg shows that some of the injuries and deaths for which servants were responsible in this dissertation's sources were unintentional. They might be the result of carelessness, as in Smith's case, or misguided attempts to be helpful, as when William Funnell gave his master Richard Frisk's horses some substance (indecipherable in the record) "under pretence of making them draw better, by which [they were] near dying."[181] They might be sheer unlucky mishaps, as when John Clarringbould inadvertently killed his master's lamb by knocking it down a dike with a thatching rod as he was driving it through a gap in the hedge. A thirteen-year-old witnessed it happen and testified at the Lathe of St. Augustine petty sessions that it had been an accident. The magistrates dismissed the charge against Clarringbould.[182]

In other cases, however, the cruelty was clearly deliberate. Montague Pennington and Mr. Backhouse deducted £5 from Richard Horn's wages for "beating and violently abusing one of his [master's] horses."[183] In 1798, John Duckett was sentenced to one month of hard labour in the Shrewsbury House of Correction for violently kicking his master's wagon horse in the stomach, "of which Kick the said Horse did die on the evening of the next day."[184] Six years earlier, Richard Rawlins had been committed for the same length of time for beating and abusing his master's mare so badly that she "lost part of her tongue."[185]

These men, and others like them, may have snapped and lashed out in frustration at animals behaving uncooperatively. Or they might have been lashing out at their employers via

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[181] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, November 10, 1774, p. 78.
[182] KHLC, PS/SA/Sr/1, St. Augustine Petty Sessions, October 4, 1848.
[183] KHLC, U2639/O1, Montagu Pennington, June 6, 1812, p. 50.
[184] SA, QS/10/1, Calendar of Prisoners, 1786-1800, Calendar No. XXI, October 6, 1789, Prisoner 16, p. 3.
[185] SA, QS/10/1, Calendar of Prisoners, 1786-1800, Calendar No. XXXVI, April 17, 1792, Prisoner 38, p.3.

the animals. Certainly, the cruel treatment of a master's horse was often perceived and dealt with as a case of misbehaviour in the employment relationship. For instance, in 1810 Mr. Woodward complained to Pennington that his servant William Piddock had beaten his horses "unmercifully, and being reproved swore at his master and gave him bad language." Pennington noted that Piddock "acknowledged his offence and promised to behave better, but seemed indeed to be saucy." The magistrate fined Piddock, but warned him that he "would certainly commit him if he behaved ill again."[186] The servant's unmerciful beating of the horses was a variety of 'ill behaviour' along with swearing at and talking back to his master.[187] Similarly, in 1773, Ralph Drake Brockman discharged a waggoner who had "behaved ill" by giving hot oil to his master's horses.[188] The concern manifested in these cases of cruelty was less with the brutal treatment of the injured animals themselves than with the defiance and disrespect that it signaled toward their owners, and the threat implicit in its barbarism.

John Archer has argued that animal maiming, though not always an "expression of social or class hatred" and not as common a protest crime as incendiarism, could nevertheless be a response to the "most serious breakdown in personal relations between master and men." Animal maiming was a "weapon of psychological terror," an act that could be construed as a "kind of symbolic murder of the farmer."[189] Timothy Shakesheff also contends that animal maiming was a form "not simply of rural terrorism but psychological terrorism *par excellence.*" The purpose of the "destructive" and "sadistic" beating, poisoning, and brutalizing of animals was to convey a

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[186] KHLC, U2639/O1, Montagu Pennington, December 20, 1810, p. 26.
[187] KHLC, U2639/O1, Montagu Pennington, December 20, 1810, p. 26.
[188] BL, MSS Add. 42599, William Brockman, James Brockman, Rev. Ralph Drake Brockman, February 22, 1773, p. 77.
[189] John E. Archer, "'A Fiendish Outrage'? A Study of Animal Maiming in East Anglia: 1830-1870," *The Agricultural History Review* 33 (1985): 149, 156-157.

message of hatred and intimidation to their owners.[190] It is hard to imagine what other motive William Fagg had, for example, when he gave "wood laurel to his master's horses, presumably with design to injure them."[191] Laurel is highly toxic to horses.[192] Deliberate poisoning such as this requires time and forethought. It seems unlikely that Fagg would stay angry at a horse itself long enough to conceive and carry out such a coldly calculated plan to kill it. That kind of lasting grudge is usually reserved for people.

Presumably, if it could have been proven conclusively that servants were acting out of malice toward their masters when they assaulted their animals, they would have been prosecuted under the Black Act. Poisoning might have been outside its scope, but the deeds of at least some servants clearly fell within the meaning of the legislation. John Duckett killed the poor horse that he kicked violently. The injuries that Richard Rawlins inflicted on his master's mare, namely the partial loss of her tongue, qualified as maiming. We saw in *R. v. Shepherd* (1790), the case of the man who cut off part of a gelding's tongue, that he was acquitted because of doubts about his motive, not about whether he had maimed the horse.

Yet even if malicious intent could not be established definitively enough for these servants to be prosecuted under the Black Act, it is still possible that they were motivated by resentment toward their masters in killing and injuring their horses. As Griffin points out, even when workers were acting out of antipathy to the animal and not its owner, acts of cruelty still took place in the context of a reordering of "the social…in relation, and with reference, to animals." With the growth of agrarian capitalism in the late eighteenth and early nineteenth centuries, there was an increasing number of "animal-specific jobs" and mounting value placed

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[190] Timothy Shakesheff, *Rural Conflict, Crime and Protest, Herefordshire, 1800-1860* (Woodbridge, Suffolk: The Boydell Press, 2003), 176, 198.
[191] KHLC, U2639/O1, Montagu Pennington, April 19, 1824, p. 164.
[192] http://www.petmd.com/horse/conditions/digestive/c_hr_laurel_poisoning

on animals' bodies. Animals were both objects of intensive care and labour for farm servants and symbols of the drive to maximise profits for farmers. Violence directed at animals was an attack on capitalism and the privileging of animal over human life at a time when real farm wages were declining and there was widespread rural unemployment and underemployment, especially after 1815 in the southeast of England.[193] Notably, William Fagg the horse poisoner lived in Kent in the early nineteenth century.

Servants who beat their employers' horses "unmercifully," who kicked them and cut out their tongues and poisoned them, whether they were consciously trying to threaten and intimidate their masters or not, were venting aggression bred from dissatisfaction with their working conditions. They were attacking the embodiment of those conditions, and of the general injustice of the new social order, in creatures that required constant and onerous care and were perhaps treated better by farmers than labourers were. Carolyn Steedman has similarly argued that class antagonism and the overt disparity of wealth and power on continuous display provoked some young domestic servants into murdering the children in their care. Driven past the point of endurance by dirty, gruelling work conditions, and surrounded by the comparative opulence of their employers' lives, these women reacted in "hyperbolic, desperate, crazed" ways. For instance, one maid poisoned her mistress's child with arsenic in revenge for being called a "dirty slut," and another boiled a toddler in a copper pot because she had soiled herself again.[194] It is probable that an incident like that of William Fagg feeding wood laurel to his master's horses with "design to injure them" was also born of a deep sense of resentment at the social and working conditions of servants.

This particular expression of class hatred was strikingly gendered. We have seen that

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[193] Griffin, "Animal Maiming," 302, 312-313.
[194] Steedman, "Boiling Copper," 36-77, especially 66-67, 72, 75.

female servants could be just as violent as male servants toward their employers. Moreover, Steedman's account of child-murdering maids proves that they could be brutal in attacking their employers' proxies as well. However, animal cruelty was an almost exclusively masculine crime. No female servants in this dissertation's sources were prosecuted specifically for injuring animals. Ann Townshend's employers, the Osborns, did accuse her in a hearing before the Nottinghamshire magistrate Sir Gervase Clifton of shutting up the calves without their meals and beating them with a stick, but this was part of a litany of grievances that included spilling the milk, cheating her mistress out of change when she paid for the baking, selling the butter for 10 pence while only accounting for 8 pence, sitting up all night with a man she let into the house after the family had gone to bed, and wearing her mistress's petty coat without permission.[195]

On the other hand, we saw in Tables 2.8 and 2.9 in Chapter Two that between the two databases there were17 complaints of animal cruelty brought against male servants. The number is not large, but neither were the numbers of workers assaulting their employers. It is noteworthy that one form of violence would be so much more gendered than the other. My findings also corroborate those of Griffin and Archer. In his study of animal maiming in East Anglia between 1830 and 1870, Archer found that all of the convicted offenders were male and their average age was eighteen years old.[196] Griffin has confirmed that animal maiming was "overwhelmingly a practice of men, mostly young men." Of the ninety-one people arrested for maiming animals in his sample of cases drawn from newspaper reports and court records in southern England between 1790 and 1850, only four were women. They were all involved in the same episode of

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[195] NA, M8051, Sir Gervase Clifton, 28-30.
[196] Archer, "A Fiendish Outrage," 154.

hog poisoning at Basing, along with a male relative.[197]

It is possible that the sexual division of labour on farms can explain the lack of prosecutions brought against female servants. As we have seen, men normally cared for horses and draught animals, while women tended the poultry, milked the cows, and managed the dairy.[198] Horses accounted for 88% of all the injured animals in this dissertation. Griffin has also found that "equines were by far the most frequent target of animal maimers," as have Archer and Shakesheff.[199] It stands to reason that male servants, who worked with horses most closely, would be the ones harming them. The question is whether all the defendants in cases of animal cruelty were male servants because employers were more concerned with prosecuting injuries to horses than to other animals, or whether the majority of injured animals in these cases were horses because male servants were more prone than their female counterparts to harm animals.

Horses were indisputably valuable. In Archer's words, they were "the most important working animal."[200] However, other animals that female servants were more likely to work with, such as cows, were also valuable. One dairy cow, for instance, could generate estimated annual profits ranging from £2 in the poorer pastures of upland Yorkshire to £10 a year in the rich dairying plains of Cheshire.[201] Moreover, the statutes criminalizing the killing, maiming, and wounding of animals applied not only to horses, but also to cows and sheep and other farm animals.[202] There was even some debate as to whether horses fell within the meaning of the

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[197] Carl J. Griffin, "'Some Inhuman Wretch': Animal Maiming and the Ambivalent Relationship Between Rural Workers and Animals," *Rural History* (2014): 142.
[198] Kussmaul, *Servants*, 34.
[199] Griffin, "Some Inhuman Wretch,"141; Archer, "A Fiendish Outrage," 149-150; Shakesheff, *Rural Conflict*, 197.
[200] Archer, "A Fiendish Outrage," 148.
[201] Robert Trow-Smith, *A History of British Livestock Husbandry, 1700-1900* (London: Routledge, 2006, orig. 1959), 194.
[202] For instance, 22 & 23 Car. 2 c.7 (1670).

Black Act, since the wording of the statute stipulated that it pertained to "cattle."[203] When the question was brought before the high court judges in 1770, they unanimously agreed that horses were included as well.[204] In *R v. Chapple* (1804), the judges affirmed that the "cattle" mentioned in the Black Act also encompassed pigs.[205] It is clear that at least theoretically it was as grievous an offence to kill or maim cows and other farm animals, as it was horses.

Therefore, it seems likely that female servants actually did not injure their employers' animals as often as male servants did. This is not to say that women never harmed animals. We have seen that Ann Townshend beat the calves. Furthermore, the defendant in *R v. Chapple* (1804) was a woman, Sarah Chapple, who had poisoned to death three of William Osmond Jr.'s pigs. Female servants were hardly constitutionally incapable of cruelty to animals. Rather, they perhaps had less motive and opportunity than their male counterparts to kill and injure them. Animal maiming was partly a crime of social protest, especially amidst the deteriorating working conditions of rural southeastern England. Indeed, the vast majority of cases of animal cruelty in my sources came from the southeast and over half of them came from Kent alone. We saw in the Introduction that female servants were being increasingly pushed out of farm work in the southeast from the last quarter of the eighteenth century on, as grain production expanded. On the other hand, they continued to be employed in the more pastoral west of England, where their wages were actually rising.[206] Thus, female servants in the southeast had diminished access to animals compared to male servants, both because they were being progressively driven out of agricultural employment, and because the kinds of animals they normally worked with, for

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[203] 9 Geo. 1 c. 22 (1723).
[204] *R. v. Paty* (1770), 1 Leach 72, 168 Eng. Rep. 138; Burn, *Justice of the Peace*, 22nd ed., Vol. 1 (1814), 482-483.
[205] *R v. Chapple* (1804), Russ. & Ry. 77, 168 Eng. Rep. 692.
[206] Snell, *Annals*, 38, 40, 45, 50, 61-62, 312.

instance cows, did not feature prominently in arable farming. By contrast, in dairying regions where they continued to be widely employed and had more interactions with animals, they had less incentive to harm them out of a feeling of class resentment because the conditions of work had not deteriorated as badly in these areas.

Conclusion

Assault was an area in which the employer-friendly bias of master and servant law was readily apparent. While the Statute of Artificers singled out servants who assaulted masters for particularly severe punishments, masters were granted considerable leeway to assault their servants under the guise of 'correcting' them. However, this right to chastise servants, especially adult servants, was challenged by the workers who brought prosecutions for assault against their abusive employers, and increasingly in the high courts as corporal punishment began to fall out of favour. The cases that servants brought before magistrates illustrate both their conviction that their masters' use of force against them was illegitimate, and also the depressing regularity with which they were abused.

Female servants were particularly likely to be assaulted by their masters and mistresses. They brought proportionately more assault grievances than their male counterparts, especially when we consider that apprentices were responsible for almost half of the assault complaints made by male workers. While it is never possible to assert categorically that prosecution levels reflect the actual incidence of crime, because of the invariable dark figure of unreported cases, it is probable that women workers actually did have a higher chance of being assaulted than male workers. Male servants were assaulted almost exclusively by employers of the same sex as themselves, probably because they were less likely to work for and under the supervision of

women. Female servants, on the other hand, were assaulted by their employers of both sexes. Moreover, unlike male servants, they frequently endured sexual violence and harassment from their male employers. Rape victims then as now were overwhelmingly women, since rape, as feminist theorists have shown, is a patriarchal tool used to reinforce men's dominance over women.

It is debateable whether servants prosecuting their employers' assaults received justice. Only one master in any of the dissertation's sources was actually imprisoned for assaulting a worker. Fines and discharges do not seem like adequate outcomes in light of the egregious abuse some servants received at their employers' hands, particularly young women who were sexually assaulted. On the other hand, given the relatively high degree of legal tolerance for employers 'correcting' their servants, it is perhaps noteworthy that magistrates penalized violent masters and mistresses at all. In cases of sexual assault in particular, summarily mediated agreements for some monetary compensation, however insufficient, might still have been considered preferable to the humiliation of a rape trial and the low chance of securing a conviction. Success is a relative concept in a system inherently biased against both workers and women. If fines, agreements, and discharges can be considered qualified successes for servants, then women were slightly more successful as assault plaintiffs than men.

While servants were far more likely to be victims than assailants in assault cases, there were a number of instances of them assaulting their employers. These cases made up an equal – and small – share of total offences committed by both male and female servants. The latter were no less violent than their male counterparts, though neither assaulted their masters or mistresses frequently. When workers did assault their employers, it was exclusively employers of the same sex as themselves. This was probably the result of a combination of factors. Male servants would

be less likely to work for, or be supervised by, mistresses, thereby decreasing their opportunities to become involved in altercations with them. Female servants might have been discouraged from assaulting their masters by the average disparity in size and strength between men and women. It is also possible that female servants' assaults on their masters were underreported because the male victims felt ashamed at being beaten by both a woman and a subordinate. However, the evidence seems to suggest that men were not too embarrassed to admit when women had assaulted them.

Although the law allowed for the imprisonment of workers who assaulted their employers for up to a year in the house of correction, in practice their punishments were more lenient. Magistrates tended to treat servants' assaults similarly to other types of misbehaviour in the employment relationship. Workers of both sexes were more likely to be incarcerated for assault than for master and servant offences generally, but the longest sentences they received were nowhere close to a year. Though it probably fell on the more flagrant end, assault was still situated on the continuum of servants' transgressive conduct.

So was another form of violence perpetrated by servants – the killing and injuring of their employers' animals. Unlike assaults on employers themselves, this offence was conspicuously gendered. The defendants in cases of animal cruelty in the dissertation's sources were exclusively male servants. Many of these men were likely venting their resentment at deteriorating working conditions on the animals that embodied those conditions and symbolized the injustice of agrarian capitalism. Female servants, who were increasingly shut out of agricultural work in the grain producing southeast but relatively well employed in the pastoral west, did not have the same opportunities or motives as their male counterparts to engage in animal maiming.

In the past three chapters we have examined in depth the different types of employment disputes represented in the dissertation's databases. Servants complained about a wide range of mistreatment, from unpaid wages to being hit on the head with a forge hammer. The gamut of masters' grievances against their workers was even more broad, from running away to refusing orders to poisoning their horses to stealing their clothing. We have explored the ways in which gender has influenced the patterns of all these offences, as well as their prosecution and punishment. We turn now in the final chapter to a discussion of the way these patterns changed over the course of the eighteenth and early nineteenth centuries, and the role played by gender in shaping these trends.

Chapter Five: Change Over Time

In February 1696, Anne Kennand complained to the magistrate William Brockman on behalf of her unnamed daughter, a "husbandwoman," that Richard Jenkin refused to pay her 14 shillings wages.[1] One hundred and forty-seven years later, William Clifford, the agent of Nottingham hosier John Rogers, charged the "spinster" Mary Ann Cresswell at the Tewkesbury petty sessions with neglecting to return cotton materials that had been entrusted to her to work up.[2] In many ways, these women were representative of the female experience of master and servant law in their respective times. The agricultural worker Kennand numbered among 63 female servants in William Brockman's notebook. Their cases accounted for 29% of his total employment disputes. The textile worker Mary Ann Cresswell, on the other hand, was one of only 8 female servants in the Tewkesbury petty sessions record. Their cases comprised just 10% of all the employment conflicts in that source.

As these examples illustrate, female servants' experience of master and servant law changed noticeably over the course of roughly one hundred and fifty years, the period covered by this dissertation. From the end of the seventeenth century to the middle of the nineteenth century, they made up a decreasing share of all workers in master and servant disputes. This chapter analyses this trend in detail and then explores reasons for the decline, suggesting that it was a result of women's changing labour force participation – specifically their declining employment in arable agriculture. Textile workers represented an important exception to the overall decrease of women in master and servant conflicts. As we shall see, manufacturers used prosecutions under employment law to enforce labour discipline on female textile workers, in both mills and

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[1] BL, MSS Add. 42598, William Brockman, p. 33.
[2] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, June 28th, 1845, p. 182.

the putting-out industry. The productivity of these women, which helped fuel the Industrial Revolution, was achieved in part under the compulsion of master and servant law.

The Declining Share of Female Servants in Employment Cases

The Pre-Sentencing Database is more useful for illustrating change over time than the Post-Sentencing Database, since most of the sources for the latter are concentrated in the decades around the turn of the nineteenth century, while the sources for the former dataset together span more than one hundred and fifty years almost uninterrupted. An analysis focusing on the Pre-Sentencing Database can therefore shed light on long-term patterns and developments. One of the most striking trends, illustrated in Figure 5.1, is the decreasing share that female servants made up of all workers in master and servant disputes over the course of the period.

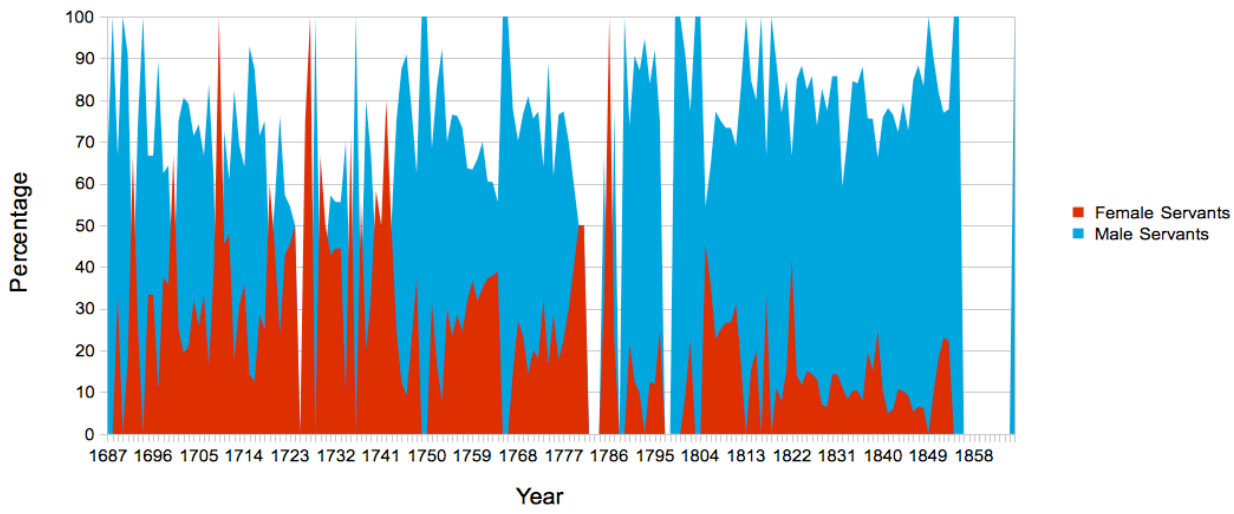

Figure 5.1 - Share of All Employment Cases in the Pre-Sentencing Database Involving Servants of Each Sex Per Year

In order to determine if the declining proportion of female servants was the result of an actual decrease in the number of cases involving female servants, I have graphed the total number of cases involving servants of each sex per year (Figure 5.2). The trend lines show that the number of cases involving female servants remained relatively stable over the course of the period, despite a small spike in the mid-eighteenth century, while the number of cases involving male servants rose dramatically in the nineteenth century. According to this graph, the decline in the share of female servants observed in Figure 5.1 is the result of an increase in the number of cases involving male servants more than a decrease in the number of cases involving female servants.

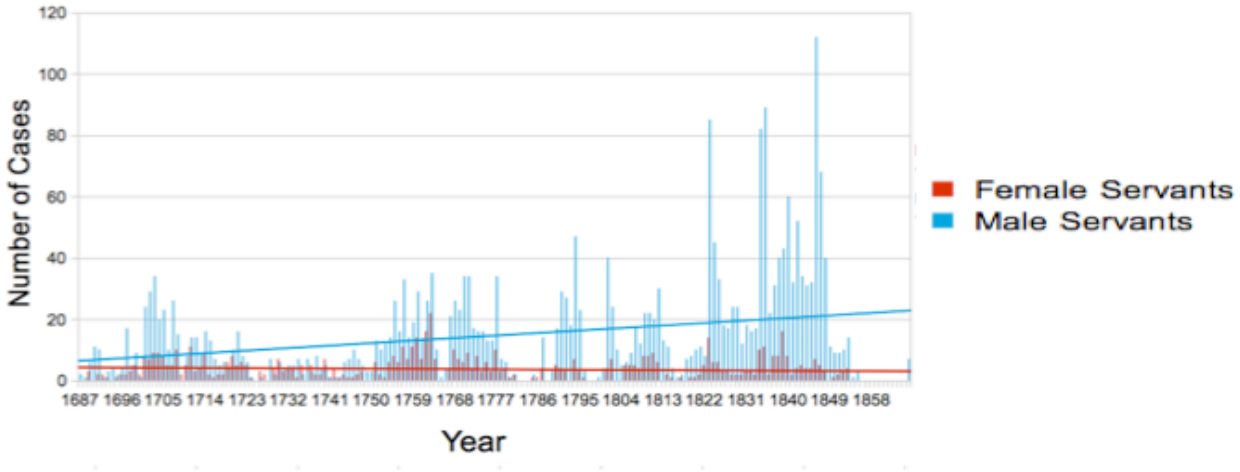

Figure 5.2 - Total Number of Employment Cases Involving Workers of Each Sex Per Year in the Pre-Sentencing Database

However, Figure 5.2 does not take into account the number of sources from which the cases were drawn in any given year. As Figure 5.3 (below) reveals, there are more sources from the second half of the period than the first. With this in mind, I graphed the average number of cases per source involving servants of each sex over the course of the period. The result is shown in Figure 5.4. As the trend line indicates, there is clearly a decrease in the average number of

cases involving female servants from the early eighteenth century to the mid-nineteenth century. The relative stability depicted in Figure 5.2 is thus revealed to be a product of the larger number of sources dating from the latter half of the period. While each contains on average fewer cases with female servants than the eighteenth-century sources, combined they roughly match the number of cases in those sources in a given year. Had there been more sources dating from the first three quarters of the eighteenth century in the Pre-Sentencing Database, the trend line in Figure 5.2 would have more closely resembled that in Figure 5.4.

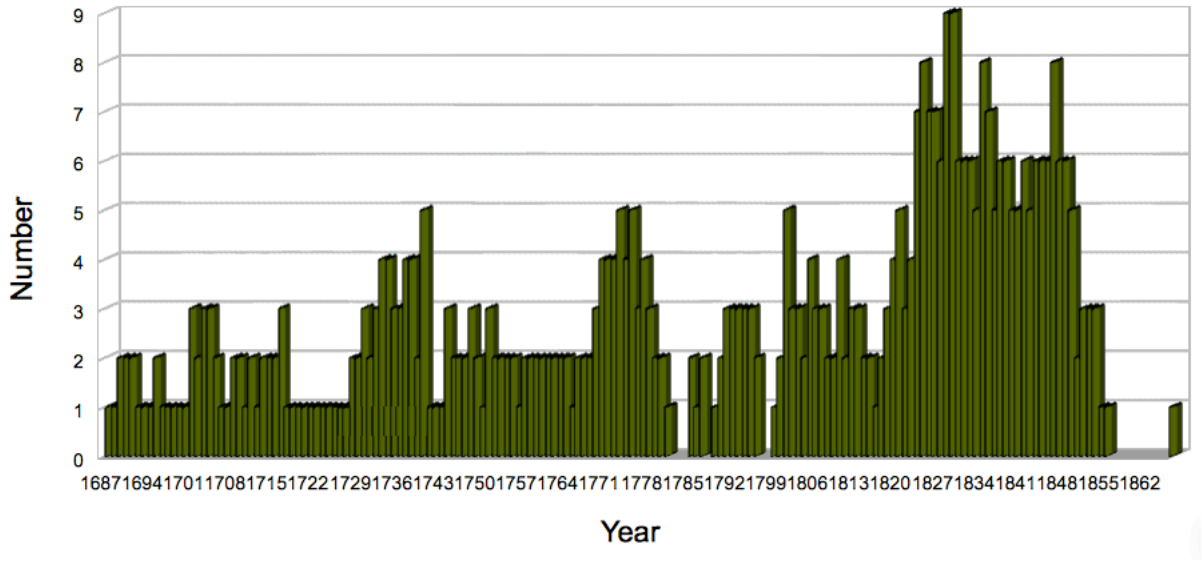

Figure 5.3 – Number of Sources Per Year in the Pre-Sentencing Database

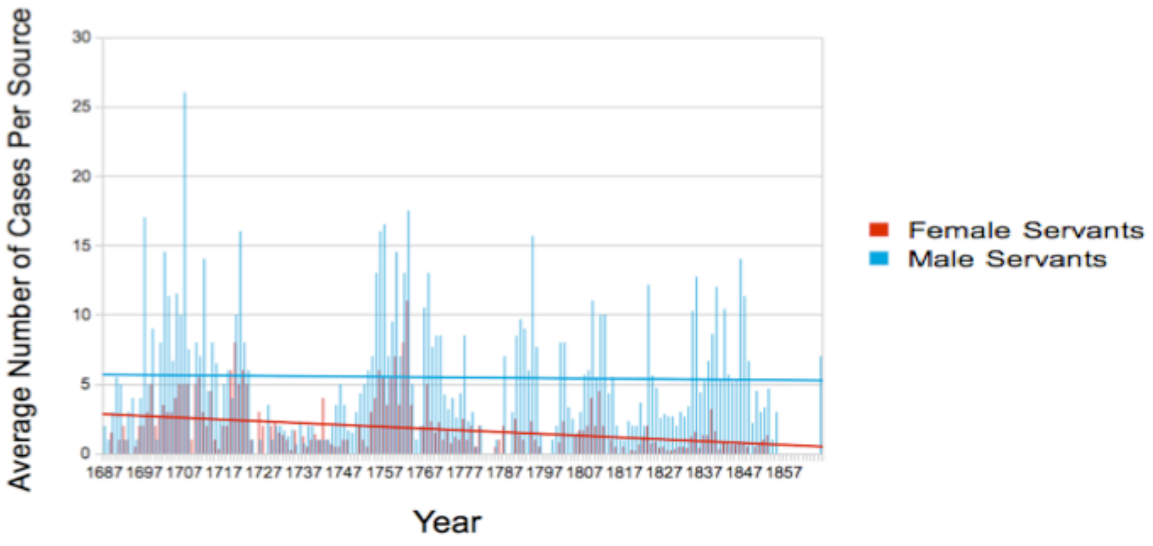

Figure 5.4 – Average Number of Cases Involving Servants of Each Sex Per Source Per Year in the Pre-Sentencing Database

Table 5.1 summarizes the difference in the numbers and shares of cases involving female servants in the two halves of the period. The average number per source drops substantially from 25 in sources dating from the first three quarters of the eighteenth century to 6.5 in sources dating from the last quarter of the eighteenth and first half of the nineteenth century. Moreover, the table shows that the average number of cases involving male servants per source also declined from 61 to 41. Therefore it is apparent that the trend observed in Figure 5.1 of a decreasing share of cases involving female servants is not the result of a sharp increase in the number of cases involving their male counterparts after all. We can analyse the decline in more detail by examining each half of the period in turn.

	1685-1780	1780-1860
Number of Sources	17	40
Total Number of Cases	1467	2018
Total Number of Female Servants	420	260
Average Number of Female Servants Per Source	25	6.5
Total Number of Male Servants	1033	1631
Average Number of Male Servants Per Source	61	41
Share of All Cases Involving Female Servants	29%	13%
Average Share of Female Servants Per Source	26%	13%

Table 5.1 – Data From Both Halves of the Period Covered By the Pre-Sentencing Database

Section One: 1685-1780

As Table 5.1 shows, sources dating from the end of the seventeenth century through the first three quarters of the eighteenth century contain more cases involving female servants both absolutely and proportionately than sources dating from the end of the eighteenth through the middle of the nineteenth century. In fact, the average share of cases involving female servants in sources from the first half of the period is twice that of the average share in sources from the latter half. While the highest share in the sources from the first part of the period was 42% in James Brockman's notebook, this was not anomalous. Five of the 17 sources from these years had shares higher than 30%. Only three – the notebooks of Philip Ward, William Hunt, and Sir Wyndham Knatchbull – had shares lower than 20%.

None of these three magistrates heard large numbers of master and servant conflicts. Philip Ward (? – 1752) of Oundle, Northamptonshire, fourth son of attorney general and Chief Baron of the Exchequer Sir Edward Ward, had been admitted to the Inner Temple in 1693 through the influence of his eminent father and called to the bar in 1710. After decades practising law, he only became a justice of the peace in 1748, when the historian Drew Gray speculates that he was already an infirm and elderly man. He died four years later in April 1752, a few months

after making his final entry in the notebook he kept of his activity.[3] In his short stint as a JP, Philip Ward heard just 6 employment disputes, accounting for approximately 7% of his overall caseload, and none of these involved female servants.

Ward's contemporary William Hunt (1696-1753) was another relative latecomer to the magisterial fold. Seated at West Lavington, Hunt, an army major from the affluent middle ranks of the Wiltshire gentry, was named to the commission of the peace in July 1743 when he was already forty-seven years old. He took out his dedimus the following April and began keeping records of his proceedings outside of Quarter Sessions. His notebook, which has been transcribed and published by the Wiltshire Record Society, covers a five-year period from 1744 until 1749.[4] Hay notes that Hunt was actually quite busy for a rural magistrate, handling on average slightly more than 100 items of judicial and administrative business annually.[5] However, employment disputes, of which he only heard 20, accounted for just 3% of his total caseload. Female servants were involved in 3 of the 20, or 15% of them.

Sir Wyndham, the fifth baronet Knatchbull (1699-1749), was the great-uncle of Sir Edward Knatchbull, who we saw in Chapter Three would become Chair of Canterbury Quarter Sessions and sentence his daughter's maid to transportation for stealing her clothing. Sir Wyndham was named to Kent's commission of the peace for the East division in 1729 when he was thirty years old. A Whig surrounded by Toryism, Sir Wyndham wintered in London to seek out more congenial company. However, he spent his summers at Mersham Hatch, the sprawling

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[3] Gray, "Making Law," 214; W. H. Bryson, introduction to *Equity Cases in the Court of Exchequer, 1660-1714*, ed. W. H. Bryson (Tempe: Arizona State University, 2007), xiii-xiv; "Parishes: Stoke Doyle," *A History of the County of Northampton*, Volume 3, ed. William Page (London: Victoria County History, 1930), 132-135, accessed February 10, 2015, http://www.british-history.ac.uk/vch/northants/vol3/pp132-135.

[4] Elizabeth Crittall, introduction to *The Justicing Notebook of William Hunt, 1744-1749*, ed. Elizabeth Crittall (Stoke-on-Trent: Wiltshire Record Society, 1982), 1, 3-4, 18.

[5] Hay, "Master and Servant," 234.

manor near the small market town of Ashford where his family had been seated since the reign of Henry VII. While there he kept his "Account of such Sessions and Sittings as I have been at, since my acting as a Justice of the Peace… with what most Remarkable has happen'd thereat." This Account was an "informal and incomplete" record of thirty-three petty sessions meetings, held between 1734 and 1745, at which Sir Wyndham was present. He was one of only five regular attendees in his division, though 'regular' in this context is certainly relative. Sir Wyndham was not a very active magistrate, which is unsurprising given his frequent absences in the metropolis. He only heard on average 9 cases annually, though his records were admittedly not comprehensive.[6] His notebook contains just 8 employment disputes, comprising approximately 10% of his documented business. Only one case involved a female worker, though this solitary proceeding still represented 12.5% of his master and servant conflicts.

It is not clear why Ward, Hunt, and Knatchbull dealt with relatively few employment disputes. In the case of Sir Wyndham, the explanation might lie in the fact that he and his fellow magistrates in the Ashford division of East Kent seemed misinformed about the law surrounding master and servant relationships and the conflicts that arose therein, and were consequently reluctant to act on any complaints. For instance, in October 1734 an unnamed person requested a warrant for a "Servant who had bargain'd with him and disappointed him," and the justices responded that they "had no power to meddle with breach of covenant."[7]

This claim is perplexing, since that very power was in fact well established. In the popular seventeenth-century legal manual *The Country Justice*, editions of which were still being published in Sir Wyndham's day, author and barrister Michael Dalton stipulated, under the

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[6] Frederick Lansberry, "'Tempered Despotism'?: The Government of the County," *Government and Politics in Kent, 1640-1914*, ed. Frederick Lansberry, Kent County Council (Woodbridge, Suffolk: The Boydell Press, 2001), 53, 60; Landau, *Justices*, 30-32, 175-176, 178.
[7] KHLC, U951/O4, Sir Wyndham Knatchbull, October 5, 1734, p. 4.

heading "Labourers," that "[a]ny two Justices of Peace upon Complaint to them made, that any *Servant* (who is retained according to the Statute of 5 Eliz.) hath… promised, or covenanted to serve, and doth not according to the Tenor of the same, the said Justices may examine the Matter; and if they shall find such Servant or Person faulty therein, they may commit him to remain without Bail until he shall be bound to the Party offended… And yet any one Justice of Peace may make his Warrant to attach a Servant… refusing to serve, to be before the Justices at their Sessions, there to answer their Defaults."[8] Richard Burn repeated this information in 1755 in his own highly influential JP manual, so it was not out of date when the Ashford magistrates were acting in the 1730s and 1740s.[9] Perhaps Sir Wyndham meant that the worker in question did not fall under the terms of the Statute of Artificers and so the magistrates did not have jurisdiction in the case. Yet he did not say so explicitly, and his phrasing strongly indicates that he felt it was the breach itself that lay outside the justices' power. The label "servant," though its use by JPs could certainly be ambiguous, also suggests that the worker would have met the statutory criteria (see Introduction).

Nor was this the only instance in which the Ashford division magistrates did not appear up to date in their knowledge of master and servant law. In 1737, when they granted a warrant for a "Person to show cause why he refused to pay for some work done in Husbandry matter, according to agreement," Sir Wyndham noted that it was "ye first time that the Justices seemed agreed to intermeddle in cases relating to Husbandry matters."[10] Agricultural work unquestionably fell within their magisterial purview. While there was confusion in this period about the wage provisions of the Statute of Artificers, this uncertainty did not relate to yearly

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[8] 5 Eliz. c.4 s. 9 (1562); Dalton, *The Country Justice* (1727), 179.
[9] Burn, *Justice of the Peace*, 1st ed., Vol. 2 (1755), 353.
[10] KHLC, U951/O4, Sir Wyndham Knatchbull, June 4, 1737, p. 29.

servants in husbandry, who were widely accepted to be some of the only workers to whom the Statute definitely applied.[11] The Ashford justices' apparent ignorance of master and servant law and consequent reluctance to act in employment disputes might explain the tiny number of them that Knatchbull recorded.

As for Hunt and Ward, it is possible that they focused more on other areas of law than master and servant conflicts. Hay has observed that justices sometimes specialized in certain fields, such as the punishment of poachers for example.[12] Other JPs do seem to have carved out a niche for themselves dealing with employment disputes. For instance, all three generations of Brockmans seem to have had a relatively thriving trade in handling master and servant problems. They accounted for 19% of William's total business and 29% of the caseload of his son James, a contemporary of Hunt, Ward, and Knatchbull. James' heir Ralph Drake Brockman acted with the same frequency (or lack thereof) as Sir Wyndham Knatchbull, hearing on average nine cases a year, and yet he still dealt with 39 employment disputes – nearly five times as many as Sir Wyndham. Moreover, they comprised one third of his overall business.[13] It is clear in the context of the Brockmans' caseloads that Hunt, Ward, and Knatchbull– as well as his divisional colleagues – did not specialise in master and servant conflicts.

However, the fact that employment disputes formed a relatively tiny percentage of their business cannot by itself account for the small share of female servants in these cases. Other eighteenth-century justices also dealt with just a few master and servant complaints, both absolutely and proportionately, yet women workers still comprised a larger share of them that was more in keeping with the period average. For instance, Henry Norris (c.1676-1762) only

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[11] Deakin and Wilkinson, *Law of the Labour Market*, 63.
[12] Hay, "England," 77.
[13] Landau, *Justices,* 178-179.

heard 13 employment disputes, comprising just 4% of his overall business, but female servants were involved in 3, or 23%, of these. Norris was a prosperous Hackney merchant who took up his magisterial duties assiduously after he was named to the Middlesex commission of the peace in 1727 as a way of advertising his social standing and strengthening his claim to gentry status. His notebook covers an eleven-year period from 1730 to 1741, recording cases he heard in his Grove Street home. For a short period, during which the Hackney petty sessions had temporarily collapsed due to a lack of magistrates in the area, Norris was in fact the only justice active in Hackney.[14]

It is surprising that Norris did not hear more master and servant cases. Hackney was a small pleasure resort near London, and the leisure market shaped its economy. Farms, gardens, and nurseries for the plants and flowers of the wealthy all offered employment, as did the mansions of the prosperous classes, the pleasure industry, and the famous Hackney brickfields. The demand for labour was high and workers were plentiful. One might expect that there would have been numerous employment conflicts, and with no other JPs nearby to resolve them, that Norris would have dealt with a lot of them. Workers might have been discouraged from approaching him with their grievances because he seemed unsympathetic to the poor. Ruth Paley, who transcribed Norris' notebook, observes that although his conduct was "impeccable" by the standards of the time – notwithstanding the reputation of Middlesex justices for corruption – he was "harsh and authoritarian." For instance, he would levy high fines on people caught pilfering from growing crops and gardens, even when they were in extreme want, and order them to be whipped when they could not pay.[15]

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[14] Paley, Introduction, xiii-xvi.
[15] Paley, Introduction, ix, xiii-xiv, xvii-xviii.

Yet even if servants were deterred from complaining by Norris' uncompromising severity, Hackney employers could have taken advantage of a sympathetic magistrate in their midst. It is possible that the constant stream of migrants, some coming from as far afield as Yorkshire to capitalize on the buoyant labour market, made it less pressing for masters to resort to a JP to punish workers who deserted their service. After all, servants who absconded could be readily replaced. Whatever the reason, Norris was likelier to deal with cases of theft and assault, which constituted more than two-thirds of his business, than with master and servant conflicts. Even when it came to the small number of employment disputes that he did hear, 8, or 62% of them, were allegations of assault or theft rather than complaints about withheld wages or runaway workers.[16] Since we have seen that female servants were involved in proportionately more cases of assault and theft than other types of employment conflicts, it is perhaps not surprising that they made up almost a quarter of the workers in Norris's notebook.

Clearly a small number of employment cases overall does not necessarily entail a small share involving female servants and cannot adequately explain the below-average shares in the notebooks of Hunt, Sir Wyndham, and Ward. Neither can geography. Oundle, where Philip Ward lived, was an ancient market town surrounded by mineral springs and pastureland.[17] Sir Wyndham and William Hunt were both seated in largely pastoral, rural farming areas. Agriculture in southeastern Kent, where Knatchbull's manor lay, centred on the raising of livestock. Nearby Romney Marsh was particularly noted for its sheep and cattle pastures.[18] Hunt presided in the heart of Wiltshire, a region primarily dedicated to farming corn and sheep, with

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[16] Paley, Introduction, ix, xiii-xiv, xvii-xviii.
[17] "Parishes: Oundle," *A History of the County of Northampton*, Volume 3, ed. William Page (London, 1930), 85-101. *British History Online* http://www.british-history.ac.uk/vch/northants/vol3/pp85-101 [accessed 21 February 2017].
[18] Mingay, "Agriculture," 58.

some enclosed pasturage for dairy cattle in the valley between the chalk uplands. Aside from agriculture, there was "virtually no industry."[19]

Other JPs living in similar areas dealt with proportionately more female servants. The magistrate Thomas Thornton (1654-1719), for instance, was lord of the manor in the parish of Brockhall, Northamptonshire, where "the soil [was] a deep rich loam, and nearly the whole of the lordship [was] laid down to permanent pasture." [20] In 1700, Thornton began keeping a notebook of the depositions he took as a magistrate. The entries break off in 1704 and resume again in 1711, continuing intermittently thereafter until 1718. Based on the evidence of this record, Thornton was hardly an active justice, hearing in total about 107 cases – the majority of them in the first four years. Employment disputes, of which he heard 5, accounted for just 5% of his meagre business. Yet female servants still made up 2, or 40%, of the workers involved in these cases.

The Brockmans, seated at Beachborough, lived within a day's walk of Sir Wyndham Knatchbull's manor, about nine miles to the southeast of Mersham Hatch.[21] The two families certainly knew each other. Sir Wyndham's father, Sir Edward, the fourth baronet Knatchbull, had even been sworn into the commission of the peace alongside William Brockman at the 1713 Canterbury Quarter Sessions.[22] The three Brockmans – especially James, whose notebook was contemporaneous with those of Hunt, Ward, and Sir Wyndham – all dealt with cases involving female servants in much higher shares than their neighbour Knatchbull.[23]

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[19] Crittall, Introduction, 4.
[20] Whellan, *History, Gazetteer, and Directory of Northamptonshire (*1849), 294.
[21] Landau, *Justices,* 175.
[22] BL, MSS Add. 42598, William Brockman, p. 101.
[23] Female servants made up 29% of workers in William Brockman's employment cases, 42% of them in James's, and 33% in Ralph Drake Brockman's.

There is no obvious explanation for the below-average share of women workers in the records of Ward, Hunt, and Sir Wyndham. It might simply be a fluke of their personalities, circumstances, or record-keeping styles. It is worth noting that their three notebooks covered shorter stretches of time than those of many other magistrates examined here. Of course, this fact in and of itself does not necessarily entail fewer cases involving female servants. However, since these JPs did not hear many employment disputes overall, the shorter time frame could have contributed to the relative lack of female servants. It is also worth noting that in 3, or 37.5%, of Sir Wyndham's recorded employment conflicts, the gender of the servant could not be determined. It is possible that some of these workers were women and that the share of cases involving female servants in Knatchbull's notebook at least was not actually lower than average. Either way, Hunt, Ward, and possibly Sir Wyndham were the exceptions that prove the rule. In general, female servants made up approximately a quarter of all workers in employment cases in the first three quarters of the eighteenth century.

Section Two: 1780-1860

This pattern changed over the following decades. As Table 5.1 showed, the average share of female servants per source fell to 13% in the second half of the period covered by the dissertation. The sources from Hampshire are a stark illustration of the paucity of cases involving female servants in the nineteenth century compared to the eighteenth. For instance, the Lyndhurst petty sessions register for the year 1823 to 1824 does not contain any cases involving female servants. A woman named Mary Gadden brought a complaint for wages against William Cull, but it was on her child's behalf, not her own.[24] It is true that employment disputes, of which

[24] HALS, 91M81/XP1, Lyndhurst Petty Sessions Minute Book, 1823-1824, August 5, 1823.

there were only six, accounted for a mere 3% of the business of the Lyndhurst magistrates. Unsurprisingly, given Lyndhurst's situation in the heart of the New Forest in southwest Hampshire, they were most frequently occupied with prosecutions for the lopping and theft of wood. Still, despite the small number of employment disputes overall, the dearth of cases involving female servants is noteworthy in the context of the wider pattern of both the county and the period.

The Basingstoke petty sessions minute book for the years 1790 to 1795 was the only source from Hampshire to contain a share of cases involving women workers higher than 5%. It is probably not a coincidence that this was also the only Hampshire source in the dissertation dating from the eighteenth century. Notably, the Basingstoke charge book for the year 1829 to 1830 does not contain any employment disputes involving female servants, though admittedly it only consists of fourteen offences in total, including a solitary master and servant case. John Blunden the Younger had misbehaved in his service to Richard Wilkins and was discharged, upon paying the expenses of the proceeding and promising better behaviour.[25]

Formerly a centre of woollen manufacture, though that industry suffered in the seventeenth century in the general depression of the town's trade, Basingstoke was situated in the arable north-east of Hampshire amid crops of turnip, wheat, barley, and oats. In the eighteenth century it was a "'good market town and a great thoroughfare,'" whose chief industry was malting.[26] Between 1790 and 1795, the JPs at its petty sessions dealt with nearly 1200 items of judicial and administrative business, including fixing poor rates and appointing parochial

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[25] HALS, 8M62/30, Basingstoke Petty Sessions Charge Book, December 8, 1829.
[26] "Parishes: Basingstoke," *A History of the County of Hampshire*, Volume 4, ed. William Page (London: Victoria County History, 1911), 127-140, accessed January 23, 2015, http://www.british-history.ac.uk/vch/hants/vol4/pp127-140.

officers. Employment disputes, of which there were 60, represented approximately 5% of their overall activity. Seven of these cases – or 12% of them – involved female servants.

One of these seven cases actually involved eight individual women, along with five men. These thirteen servants in husbandry complained in October 1792 that Michael Lade of Cannon Park refused to pay their wages. He was summoned and appeared on the appointed day a month and a half later, when Crispian Smith, one of the plaintiffs, gave evidence on behalf of all the workers. The justices present – including Lovelace Bigg Wither (1742-1813), frequent Chair of Hampshire Quarter Sessions, cousin of Sir William Blackstone, and a "beloved" and "most useful magistrate" who was "universally respected by all" – ordered Lade to pay Crispian £3 10s owing to him. After "much altercation," Lade also agreed to pay the money due to the other complainants by noon the following day. However, it does not appear that he kept his word. In January 1793, upon further testimony from Crispian, the same justices had to serve a signed order for the money on Lade's bailiff.[27] The women in this case remain in the background, their depositions – if they made any – unrecorded.

These thirteen servants were not the last to have wage disputes with Lade. Wither and two fellow magistrates were finally forced in August 1793 to grant a warrant of distress on Lade's goods and chattels – an action they informed him they were taking in a letter – after he refused for more than two months to pay another pair of workers, James Bredman and Daniel Egleton. They had made multiple appearances at petty sessions in pursuance of more than £2 each that they were owed.[28] The following year, as reported in *The Sporting Magazine*, Lade's

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[27] HALS, 50M63/C1, Basingstoke Petty Sessions Minute Book, October 19, 1792; December 5, 1792; January 2, 1793; Reginald Bigg-Wither, *Materials for A History of the Wither Family* (Winchester: Warren & Son, 1907), 37-56; Kathryn Sutherland, "Chronology," *A Memoir of Jane Austen and Other Family Recollections*, ed. Kathryn Sutherland (Oxford University Press, 2002), lviii-lxii.
[28] HALS, 50M63/C1, Basingstoke Petty Session, May 1, 1793; June 5, 1793; August 7, 1793.

training groom and jockey John Scott brought an action against him for wages and money loaned, which in 1794 were already "long depending." The matter came to trial at the Hampshire Assizes. Following a few witness examinations, the judge recommended that the case be referred to the decision of the magistrate Charles Shaw Lefevre (1759-1823), a frequent attendee of the Basingstoke petty sessions and a former lawyer who had given up his practice upon the death of his wealthy father-in-law. Lefevre, "with a view to render the parties speedy and substantial justice," accepted the "unpleasant office of arbitrator" and ordered Lade to pay Scott £165 damages as well as the costs of the proceedings.[29]

The Basingstoke magistrates seem to have been a fair-minded group willing to rule in favour of workers, even when faced with a wealthy but intransigent defendant like Lade. They ordered the payment of wages in every case for which an outcome other than the issuing of a summons was recorded, whatever the amount claimed. For instance, Lefevre and two others granted the balance of 5s due to Elizabeth Wilkins from her master William Tubb, while on a separate occasion Wither and his fellow JPs awarded the sum of £1 5s 5d at the request of James Oliver's labourers James Kenny and William Knapp.[30]

It is possible that the justices were more lenient toward female than male servants when they stood accused of offences. The magistrates sentenced 6 male defendants, or 15% of them, to stints in the Odiham house of correction for their infractions, including George Whiting and John

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[29] "Court of King's Bench: Scott v. Lade, Esq," *The Sporting Magazine: Or, Monthly Calendar of the Transactions of the Turf, the Chase, and every other Diversion interesting to the Man of Pleasure, Enterprize, and Spirit for October 1794* (London: Emilia Rider, 1794), 64; David R. Fisher, "Shaw Lefevre, Charles (1759-1823)," *The History of Parliament: The House of Commons, 1790-1820*, ed. R. Thorne (Boydell and Brewer, 1986), http://www.historyofparliamentonline.org/volume/1790-1820/member/shaw-lefevre-charles-1759-1823.

[30] HALS, 50M63/C1, Basingstoke Petty Sessions, November 3, 1790; December 1, 1790; December 4, 1793.

Higgs, who were committed for disobeying their master's orders but liberated the same day.[31] The JPs did not sentence any female servants to the bridewell in the five-year span of the petty sessions record. Perhaps the Basingstoke magistrates' apparent sympathy for workers, particularly women, accounts for the higher share of cases they heard involving female servants, relative to the justices in the other Hampshire sources. However, it is worth noting that only three women workers appeared before Wither, Lefevre, and their colleagues as defendants – hardly a large sample from which to be able to generalize about the lenience of these JPs. This is a salutary reminder that the Basingstoke magistrates really did not deal with many employment disputes involving female servants, either proportionately or in absolute numbers. After all, the 12% share of cases involving women is still lower than the period average of 13%.

After the Basingstoke petty sessions minute book, the Hampshire source with the next highest share of cases involving female servants was the Droxford petty sessions record covering the years from 1822 to 1835. The large village of Droxford, capital of its petty sessional division, lay eleven miles southeast of Winchester amid the woods and wheat fields of the Meon valley.[32] Several magistrates routinely attended the petty sessions meetings there, including Peter Barfoot, a justice who had been tried and found guilty at the Assizes in 1800 for the false imprisonment of a pauper. The man's only offence had been applying at the vestry for poor relief and then refusing to apologize for his unsolicited appearance when the parish officers demanded that he do so – for which affront Barfoot sentenced him to a week in the bridewell and threatened to tear

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[31] HALS, 50M63/C1, Basingstoke Petty Sessions, March 18, 1791.
[32] "Parishes: Droxford," *A History of the County of Hampshire*, Volume 3, ed. William Page (London, 1908), 284-288 http://www.british-history.ac.uk/vch/hants/vol3/pp284-288 [accessed 17 January 2015]; William White, *History, Gazetteer and Directory of the County of Hampshire,* 2nd ed. (Sheffield: William White, 1878), 209.

down his hand-built cottage. Barfoot was ordered to pay £50 damages "to the entire satisfaction of every one present."[33]

In a thirteen-year period, Barfoot and his fellow JPs dealt with at least 289 cases. The record might be incomplete. It consists of a bound compilation of printed, standardized forms, filled in by hand by the magistrates' clerk. These pages were not always inserted in chronological order. It is possible that some of the examinations dating from these years have not been preserved in the collection. Nevertheless, there is no reason to believe that the extant complaints are an unrepresentative sample of a potentially larger caseload. Master and servant disputes, of which there were 40, accounted for 14% of the Droxford justices' business. Only two – or 5% – involved female workers. In the first instance, Ellen New accused her mistress, the widow Lassam, of withholding her wages.[34] The next year, the yeoman John Aylward complained that Caroline Clay had quit his service without his consent.[35] The resolutions of these grievances were not recorded. Only one of the forty Droxford employment cases had a documented outcome. In 1831 David Burgess ran away and quit his service with Martha Cook, widow of Thomas Cook, whom Burgess had accused two years previously of neglecting to provide him with necessary maintenance and sustenance. Burgess pled guilty to the charge against him and was imprisoned with hard labour for one month.[36]

In trying to account for the small number of cases involving female servants in the Droxford record, it might be tempting to take this only known outcome – in addition to Peter Barfoot's egregious behaviour toward the pauper – as evidence that the Droxford magistrates

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[33]"Tuesday, July 29 to Thursday, July 31, 1800," *The London Chronicle for the Year 1800,* Vol. 88 (London: G. Woodfall, 1800), 106.
[34] HALS, 6M73/XP59, Droxford Petty Sessions, September 22, 1831.
[35] HALS, 6M73/XP59, Droxford Petty Sessions, July 12, 1832.
[36] HALS, 6M73/XP59, Droxford Petty Sessions, November 10, 1831; March 19, 1829.

were not seen to be particularly sympathetic to the labouring poor and were thus avoided by them. However, workers were actually plaintiffs in the Droxford summary court more often than they were defendants. Even if harsh punishments had deterred servants from complaining and lowered their numbers in the record, it would not explain the particular underrepresentation of women compared to men. Nor would it shed light on why female servants were also largely missing as defendants. It would be helpful to know whether Ellen New ever received her wages, and whether and how Caroline Clay was disciplined for running away. In the absence of more detailed information, it is hard to determine whether the Droxford magistrates were especially lenient or severe in their treatment of female workers, though it seems likely that they would have heard more complaints from women if they had earned a distinct reputation for favouring them.

Eight miles from Droxford lay Fareham, a market town on the shore of Portsmouth Harbour's northwestern inlet and the centre of the Fareham petty sessions division, which included the hundreds of Portsdown and Fareham.[37] Between these two hundreds, records of petty sessions in this division survive from 1813 until 1837. The Portsdown register begins in 1813 in the wake of a scandal involving a magistrate of twelve years' standing in the division, the Reverend Richard Bingham. He was convicted at the Winchester Assizes of having illegally obtained a license for a non-existent public house in Gosport, fictitiously called the Audacious and Revolutionnaire, and having fraudulently evaded the £10 stamp duty by listing a false purchase price on the conveyance deed of the property. Following a motion for a new trial, he was brought up for judgment in King's Bench and sentenced to six months' imprisonment in the

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[37] "The hundred and parish of Fareham," *A History of the County of Hampshire*, Vol. 3, ed. William Page (London: Victoria County History, 1908), 209-216, accessed January 16, 2015, http://www.british-history.ac.uk/vch/hants/vol3/pp209-216; White, *History, Gazetteer, and Directory of Hampshire*, 27.

county gaol despite numerous testimonies to his good character.[38] Quipping that they had taken their cue "from the name of the public-house, the Audacious," Lord Ellenborough also decried the "most culpable conduct" of Bingham's "brother magistrates," who allegedly turned a blind eye to the deceit.[39] The first entry in the Portsdown petty sessions record is a copy of a letter signed by five justices protesting this "undeserved" censure passed generally on all the division's magistrates. They insisted that, not being residents of Gosport, they had not been involved in the licensing of alehouses there.[40] After the letter there followed an interim in which the clerk only noted the names of the JPs present at meetings, and the occasional resolution that they passed. Records of judicial hearings do not begin until February 1827, thirteen years after the Bingham incident. They continue until 1837. The Fareham petty sessions register picks up in 1838 and spans the period until 1849. Not counting the years before 1827 when no cases were documented, the Portsdown and Fareham petty sessions records combined offer a virtually uninterrupted look at summary proceedings in southern Hampshire over two decades.

The magistrates met weekly or twice monthly at the Red Lion Inn in Fareham. Naturally, the group of a dozen or so justices regularly taking it in turns to attend the Portsdown and Fareham sessions evolved over the years, as ageing JPs died or retired and were replaced by younger faces. Although there was not complete overlap, several magistrates did appear in both the Portsdown and the Fareham records, providing continuity between the two sources beyond

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[38] "Winchester Summer Assizes – The King v. Bingham," *The Annual Register, or a View of the History, Politics, and Literature for the Year 1813* (London: Baldwin, Cradock, and Joy, 1823), 313; Arthur H. Grant, "Bingham, Richard, the elder (1765-1858)," rev. H. C. G. Matthew, *Oxford Dictionary of National Biography* (Oxford: Oxford University Pres, 2004), [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/2415, accessed 30 July 2017]

[39] *Proceedings in a Trial, the King, on the Prosecution of James Cooper, against The Rev. Richard Bingham*, *and on a Motion for a New Trial, and on the Defendant's Being Brought Up for Judgment; Taken in Shorthand by Mr. Gurney* (London: W. Marchant, 1814), 155, 165.

[40] HALS, 134M90/1, Portsdown Petty Sessions Proceedings, 1813-1837, November 17, 1813.

the location of the meetings. This group included William Thresher, who swore his qualification oath at the Red Lion in 1829 and often chaired the Fareham sessions;[41] William Grant, one of the signatories to the letter protesting Ellenborough's condemnation and a Portsmouth banker who continued to sit in sessions, albeit with declining frequency, until he was 79 years old;[42] the admiral Sir John Acworth Ommanney (1773-1855), whose close ties to Palmerston and Whig politics sidelined him from serving at sea for nineteen years;[43] and another naval officer, Captain George Thomas Maitland Purvis (1802-1884), husband of Jane Austen's niece.[44]

Together with their fellow magistrates, these men collectively handled more than three thousand items of judicial business in twenty-two years. That business increased noticeably over the course of the period. Between 1827 and 1837, when the Portsdown sessions register ended, the justices heard approximately 962 cases, many related to lopping trees or trespassing in pursuit of game. Forty-nine of these hearings, representing about 5% of their total caseload, were employment disputes. From 1838 to 1849 at the Fareham petty sessions, the magistrates processed about 2075 cases. Employment conflicts, of which there were 113, again accounted for about 5% of their overall business.

In 1828, Charlotte Oakley complained to William Grant at the Portsdown sessions that her master Richard West was refusing her haymaking money. The grievance was resolved with

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[41] HALS, 134M90/1, Portsdown Petty Sessions, "Memorandum," March 23, 1829. For an instance of his chairmanship, see: HALS, 27M78/XP1, Fareham Petty Sessions Records, April 17, 1839.
[42] Sylvanus Urban, *The Gentleman's Magazine,* Vol. 222 (London: William Pickering; John Bowyer Nichols and Son, 1844), 443; Frank Worley, "Banks in High Street, Old Portsmouth," *History in Portsmouth*, webmaster Tim Backhouse, http://history.inportsmouth.co.uk/events/banking.htm
[43] J. K. Laughton, 'Ommanney, Sir John Acworth (1773–1855)', rev. Andrew Lambert, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/20757, accessed 17 Jan 2015]
[44] Iain Gordon, *Soldier of the Raj: The Life of Richard Purvis, 1789-1868, Soldier, Sailor and Parson* (Barnsley: Leo Cooper, 2001), 297.

West agreeing to pay part of her demand and half of the costs of the hearing.[45] After this moderately successful wage claim by Oakley in August 1828, there were no more employment conflicts conclusively involving female workers for the remaining twenty-one years covered by the two records. The Fareham petty sessions register did not contain any such cases. It has the distinction of being the only source examined in this dissertation with more than one hundred employment disputes, of which not one definitively involved a woman worker.

It is likely, if not certain, that Charlotte Oakley was not actually the lone female servant in these records. The gender of the workers could not be definitively established in 36 and 49 hearings, or 73% and 61% of them respectively, in the Portsdown and Fareham records, since the clerks normally only noted the last names of the parties in a dispute. No doubt some of these workers whose sex is unknown were in fact women. For instance, in November 1843 the magistrates heard the complaint of Colwell, a "domestic servant."[46] As we have seen, the vast majority of English domestic servants were female, so the odds are good that Colwell was a woman. She was probably not the only one in the Portsdown and Fareham records who had to be categorized as 'gender unknown' because of a missing first name.

However, the majority of the workers in this category were more likely to have been male than female. For instance, in a case such as Lurman v. Buddin, where the grievance was the "non-payment of a labourer's wages," the plaintiff was probably a man.[47] As we saw in the Introduction, occupational descriptors could be used ambiguously and interchangeably, especially the designation 'servant,' which was not always employed in its legal sense of a servant in husbandry hired for a year. Still, 'labourer' usually indicated a worker hired by the day

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[45] HALS, 134M90/1, Portsdown Petty Sessions, August 27, 1828.
[46] HALS, 27M78/XP1, Fareham Petty Sessions, November 1, 1843 and November 8, 1843.
[47] HALS, 27M78/XP1, Fareham Petty Sessions, March 23, 1842.

or week – in contradistinction to a 'servant' – and labourers were more often men than women.[48] Indeed, 167 of the workers in the Pre-Sentencing Database whose occupation was listed as 'labourer,' or 94% of them, were men (see Table 5.6 below). The chances are good, then, that Lurman the labourer, and the other workers so classified in the Portsdown and Fareham records, were male. It is also likely that in a case such as Pitney v. Edwards, where a master complained about his misbehaving apprentice, the defendant was male.[49] Scholars have shown that boys were more often apprentices than girls, especially during the nineteenth century.[50] My statistics support this contention, since 316, or 89%, of the workers who were described as 'apprentices' in the Pre-Sentencing Database were male.

Admittedly, no occupational designations were listed for workers in 109, or 67%, of the Portsdown and Fareham hearings. However, 53, or 79%, of the occupations that were recorded were male-dominated. In addition to labourers and apprentices, these included workers in the "sea service" and "on the railway" – two employments that were exclusively undertaken by men in the dissertation's sources.[51] Furthermore, we must return to the fact that all of the workers whose sex could be conclusively established in these Fareham division records were male except for one. Fifty-six servants identifiable by gender, or fully 98% of them, were men. Undoubtedly some women workers have been lost to my statistics because of the clerks' cursory record keeping. Nevertheless, the evidence of those cases where sex and occupation could be determined shows that the Portsdown and Fareham sources still contain a remarkably small share of employment disputes involving female servants.

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[48] Kussmaul, *Servants*, 15.
[49] HALS, 27M78/XP1, Fareham Petty Sessions, July 6, 1842.
[50] Snell, *Annals*, 283, 309; Oxley, *Convict Maids*, 147-151.
[51] HALS, 27M78/XP1, Fareham Petty Sessions, July 8, 1840 and July 22, 1840.

Altogether cases involving female servants made up just 10, or 4%, of the employment disputes in the six Hampshire sources, and only 3, or 0.5%, of those in the sources dating from the second quarter of the nineteenth century. Part of the explanation for this exceptionally small share could lie in the demographic quirks of the county. It seems that women made up a below average proportion of nineteenth-century Hampshire's population. The White's Directory for the county notes that as of the 1871 enumeration, 275,393 men and 269,291 women lived there. However, in most English counties at the time, with the exception of those such as Durham and Northumberland that were home to large numbers of miners, there was a noticeable "excess of females." In Hampshire, the proportion of women had steadily declined since 1801.White's *Directory* attributed the overall surplus of men to the presence of thousands of soldiers in the county, especially in Portsmouth and Aldershot.[52] The 1841 census reveals that men did outnumber women in Fareham and in Droxford.[53] It is possible that Hampshire's atypically low ratio of women to men in the general population contributed to the noticeable lack of female servants in the sources.

Yet this lack also fit the wider pattern of the period. Only one source dating from the first three quarters of the eighteenth century, Philip Ward's notebook, did not contain any cases involving female servants. By contrast, nine of the forty sources dating from the last quarter of the eighteenth century and first half of the nineteenth century, or 23% of them, did not contain any such cases. For instance, none of the employment disputes in the Aylesbury petty sessions

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[52] White, *History, Gazetteer and Directory of the County of Hampshire,* 61.
[53] GB Historical GIS/University of Portsmouth, Fareham PLU/RegD Through Time/Population Statistics/Males & Females, *A Vision of Britain Through Time.* http://www.visionofbritain.org/uk/unit/10055738/cube/GENDER. Accessed January 12, 2016; GB Historical GIS/University of Portsmouth, Droxford RegD/PLU Through Time/Population Statistics/Males & Females*, A Vision of Britain Through Time*. http://www.visionofbritain.org.uk/unit/10155125/cube/GENDER. Accessed January 12, 2016.

records from the years 1800 to 1807 involved female servants. Admittedly, there were only 14 of them, representing approximately 3% of overall business at the petty sessions. The justices who presided at these meetings were much more frequently occupied with non-criminal concerns, such as applications for poor relief, settlement and bastardy examinations, and the appointment of publicans to "serve the Gaol with Beer" for the week, which was not uncommonly the only business at a meeting – as on June 28, 1806, for example, when John Laines of the Oxford Arms received the order.[54]

The notebook of Thomas Lee Thornton (1726-1790) of Brockhall, Northamptonshire – the grandson of William Brockman's contemporary Thomas Thornton – covered the year 1789. It only contained three employment disputes, accounting for about 5% of his total magisterial activity.[55] None of the three cases involved female servants. Once again, the sample size is very small, though it is worth remarking that Thornton's eponymous grandfather heard a comparably tiny number of master and servant proceedings – just five – and yet female workers were still involved in 40% of those.

In Kent, the justice A. H. Bradley also heard only three employment cases between the years 1817 and 1819, making up approximately 7% of his overall business. Though no female servants were directly involved in these disputes as parties to the employment relationship, two unnamed women were accomplices in carrying away a "considerable quantity" of wood that the farmer John Grace had hired Joseph Day to cut.[56] A. H. Bradley, in addition to keeping his own notebook, was also one of the justices who occasionally sat at the petty sessions meetings for the Lathe of Scray between 1818 and 1832. Cases involving female servants accounted for just 3, or

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[54] CBS, PS/AY/M/2, Aylesbury Petty Sessions, June 28, 1806.
[55] Burke, *Genealogical and Heraldic History*, 6th ed., Vol. 2 (1882), 1589.
[56] U2802/O1, Notebook of JP A. H. Bradley, 1817-1819, October 9, 1818.

8%, of the employment disputes in these records. This was not at all unusual for the time. Fully 48% of all sources in the second half of the dissertation's period, like the Lathe of Scray petty sessions record, had shares of cases involving female servants lower than 10%. By comparison, only one source in the first half of the period did – Philip Ward's notebook, which contained none.

Moreover, in the first half of the period, cases involving female servants made up at least a fifth of all employment disputes in 14, or 82%, of the sources. They only did so in 8, or 20%, of the sources in the second half of the period. Just two sources out of 17 that dated from the period post-1830, or 12% of them, had shares of cases involving female servants higher than 20%. These were Edward Knatchbull's second notebook of Quarter Sessions cases, covering the years 1830 to 1835, and the Devizes petty sessions record, which will be discussed at greater length in the subsequent section on textile workers. Clearly, the Hampshire sources were not anomalous for the time period in their lack of cases involving female servants.

Accounting for the Declining Share of Female Servants

It is difficult to explain the decreasing share of employment disputes made up of cases involving female servants. It cannot be attributed to a particularly precipitous decline in female servants' shares as either defendants or plaintiffs. As Figure 5.5 shows, their shares as both followed similar downward trends over the course of the period. Tables 5.2 and 5.3 reveal that female servants made up almost identical proportions of complainants and defendants in the two halves of the period. They comprised slightly more than a quarter of both types of disputant in the first half, and just over a tenth of them in the second. Like their male counterparts, they were more likely to be defendants than plaintiffs in the decades from the third quarter of the eighteenth

century to the mid-nineteenth century. This is not surprising, given that master and servant law became more inimical to labour over the course of the period, as we saw in the Introduction, and employers increasingly dominated proceedings.[57]

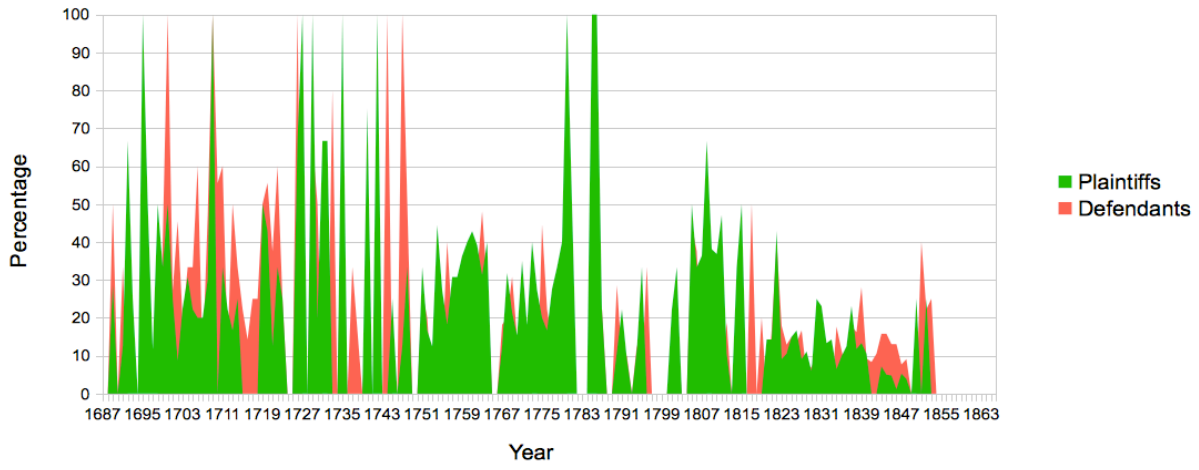

Figure 5.5 – Shares of All Plaintiffs and Defendants Made Up of Female Servants in Pre-Sentencing Database

	1685-1780	1780-1860
Total Number of Plaintiffs	721	936
Total Number of Female Servant Plaintiffs	199	116
Total Number of Male Servant Plaintiffs	516	716
Female Servant Plaintiffs as Share of All Plaintiffs	28%	12%
Male Servant Plaintiffs as Share of All Plaintiffs	72%	76%
Plaintiffs as Share of All Female Servants	47%	45%
Plaintiffs as Share of All Male Servants	50%	44%

Table 5.2 – Female and Male Servant Plaintiffs Over Both Halves of the Period in the Pre-Sentencing Database

[57] Hay, "England," 62, 95-100; Hay, "Master and Servant," 231, 255-256; Steinmetz, "De-juridification," 276.

	1685-1780	1780-1860
Total Number of Defendants	612	1080
Total Number of Female Servant Defendants	165	143
Total Number of Male Servant Defendants	441	914
Female Servant Defendants as Share of all Defendants	27%	13%
Male Servant Defendants as Share of All Defendants	72%	85%
Defendants as Share of All Female Servants	39%	55%
Defendants as Share of All Male Servants	43%	56%

Table 5.3 - Female and Male Servant Defendants Over Both Halves of the Period in the Pre-Sentencing Database

It is possible that the declining share of female servants in employment disputes in the first half of the nineteenth century was at least partially caused by Kenyon's decision in *R v. Inhabitants of Hulcott* (1796), effectively excluding domestic servants from the coverage of employment law. As we have seen, domestic service was the most common occupation of women in this period. It would stand to reason that the number and percentage of cases involving working women would decrease after a majority of them were omitted from the provisions of master and servant law. However, the persuasiveness of this explanation depends on whether or not Kenyon's ruling actually made a practical difference in the way magistrates dealt with domestic servants. We must establish whether they heard cases involving domestic servants in substantial numbers before *Hulcott*, and whether they stopped acting in them afterwards.

This is not a simple task. On one hand, 15, or 71%, of the cases involving domestic servants in the Pre-Sentencing Database did date from the years before 1796. Moreover, 3, or 50%, of the cases involving domestic servants appearing in my sources after the *Hulcott* decision were not master and servant offences, but rather instances of theft or embezzlement. These infractions fell outside the purview of Kenyon's ruling, which excluded domestic servants from the coverage of employment law, not criminal law altogether. Of the remaining cases, magistrates only acted summarily in one of them. Pennington and the other justices at a Wingham petty sessions meeting in 1816 ordered a man named Tomlin who had turned his

maidservant away to take her back again.[58] In another case, as we saw in Chapter Two, a master named Dilnot dismissed his maidservant on his own authority after discovering her under the bed of a male servant in a "very improper situation." Pennington and Backhouse, who were dealing with the initial complaint of the male servant and two others about the poor quality of their food and drink, did not interfere or order Dilnot to pay her wages.[59] In 1843, the Fareham petty sessions magistrates dismissed Colwell's complaint against Winkworth for "refusal of wages as a domestic servant" because they lacked jurisdiction.[60] In 1838, the JPs at the Devizes petty sessions also dismissed a complaint for want of jurisdiction. Elizabeth Martin accused Michael Manning, who had hired her for a year, of turning her away. Though the justices did not specify that Martin was a domestic servant, it seems likely that she was given their reason for refusing her case.[61] This evidence all suggests that Kenyon's decision did have an impact on the conduct of justices.

On the other hand, though, the total number of cases definitively involving domestic servants is small – just 21. Domestic servants only accounted for 3% of all female servants in the Pre-Sentencing Database. It is possible that domestic servants did not appear in summary courts for employment grievances very frequently either before or after Kenyon's ruling. Despite the fact that, as we have seen, a magistrate's approval was usually required to terminate a contract in the eighteenth century, the "general practice throughout the kingdom, and particularly in large towns" was for masters to give domestic servants a month's warning or a month's wages and

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[58] KHLC, U2639/O1, Montagu Pennington, December 3, 1816, p. 114.
[59] KHLC, U2639/O1, Montagu Pennington, July 22, 1822, p. 155.
[60] HALS, 27M78/XP1, Fareham Petty Sessions, November 1, 1843 and November 8, 1843.
[61] WSHC, B13/100/2, Devizes Minute Books, August 14, 1838.

dismiss them on their own authority.[62] This custom was not just confined to the cities either. Between 1800 and 1806, as he recorded in his account of the servants he had hired, the Hampshire farmer James Edwards "paid off" three maidservants – two who "would not do for our place," and one who was too ill to work.[63] It stands to reason that domestic servants did not make up a large share of the workers in my sources if many employers took it upon themselves to resolve their own issues with them without recourse to a magistrate.

However, women's work often defied easy categorization, by historians and contemporaries alike. For instance, Mary Hughes agreed with John Hopkins of Woolstone, Shropshire to "serve him as a kitchen maid and to feed the pigs for a year."[64] Mary Ann Castle was hired by the farmer Edward Curling to "milk cows and to do other things in his farm house."[65] In Warwickshire, Catherine Evans – who admitted in her complaint for wages that she "did not do her work well" – was responsible for the housework, spreading manure in the fields, getting up the potatoes, milking the cows, and "anything else there was to do."[66] It is difficult to determine whether these women count as domestic servants when their duties took them both inside and outside the home. I have not coded them as such in the Pre-Sentencing Database. Domestic servants would have made up a larger share of all female workers if women such Hughes, Castle, and Evans were included among their ranks. However, a broader definition of what constituted a domestic servant might also dilute the impact of Kenyon's decision in *R. v. Inhabitants of Hulcott*. Many of the women whose employment straddled the line between indoor and outdoor work were involved in cases dating from the nineteenth century.

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[62] *R. v. Inhabitants of Brampton* (1777), Cald. 11; Hill, *Servants*, 101; Hay, "England," 89 n. 112, 110 n. 185.
[63] HALS, 2M37/341, Farm Book of James Edwards,1800-1806, p. 9, 17, 21.
[64] SA 1060/168, Thomas Parker, June 9, 1810.
[65] KHLC, PS/US/ Sd/1, Lathe of Scray, May 6, 1830.
[66] WCRO, QS 116/2/1/2, Atherstone Minute Books, July 7, 1846, p. 74.

Of course, this might not be a coincidence. Steedman contends that there is "abundant evidence" of justices believing or pretending to believe the convenient fiction that domestic servants were actually servants in husbandry so that they could continue to exercise jurisdiction over disputes between these workers and their masters and mistresses when approached by either party.[67] Some of the occupational descriptors in the sources I examined certainly seem like attempts to pass off domestic servants as workers who were definitely covered by the employment statutes. Henry Yate recorded the complaint of Joseph Hill of Herefordshire that Elizabeth Lord, his "domestic servant of all work in husbandry," had run away in breach of contract. Yate issued a warrant and Elizabeth Lord was brought before him at Quarter Sessions and compelled to return to her place.[68] By comparison, Yate described James Lord, another worker who had run away from his master, as a "servant of all work in husbandry."[69] Notably, the term "domestic" was only applied to the female servant.

Similarly, Montague Pennington referred to Sarah Hart as a "maid servant (in husbandry)."[70] The parenthetical phrase "in husbandry" seems like an attempt to justify Pennington's summary action in the case – he ordered her to return with abated wages to her master, from whom she had absconded. It was not Pennington's customary practice to describe all female agricultural workers as "maid" servants in husbandry. For instance, he simply called Sarah Kemp, who had also run away from her master, a "servant in husbandry."[71] In Hart's case, Pennington was probably trying to give himself jurisdiction. He seems like a magistrate who was aware that domestic servants were not included in the employment statutes, but wanted to bring

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[67] Steedman, *Labours Lost*, 178, 217.
[68] HARC, BB88/1, Henry Yate, January 6, 1802, p. 30.
[69] HARC, BB88/1, Henry Yate, December 9, 1801, p. 26. Yate granted a warrant against James Lord as well, but he was too ill to be brought up.
[70] KHLC, U2639/O1, Montagu Pennington, January 2, 1812, p. 42.
[71] KHLC, U2639/O1, Montagu Pennington, May 20, 1812, p. 49.

as many as possible under their coverage by spinning them as servants in husbandry. When Mrs. Curling, who kept a small dairy farm, complained to Pennington and three other justices in petty sessions that her "maid, who milked the cows and sold the milk, etc," had run away, Pennington noted that there was "doubt" as to "whether [the maid] was a servant in husbandry, but Mr. Backhouse and Mr. Leith agreed with me (and with Mr. Mercer) that she was."[72]

Ultimately, it is difficult to determine whether Kenyon's ruling in *R. v. Inhabitants of Hulcott* contributed to the declining share of employment disputes involving female servants. Some magistrates, such as the JPs of the Fareham petty sessions, clearly abided by the decision and refused to deal summarily with cases involving domestic servants. Others, such as Yate and Pennington, appear to have continued mediating their employment disputes under the pretence that they were servants in husbandry. The evidence of my sources suggests that the number of cases involving women explicitly identified as domestic servants did decrease after Kenyon's decision in1796. However, as Steedman contends, many JPs kept dealing summarily with women who might previously have been called domestic servants but were now deliberately not. For instance, in 1846 at the Atherstone division court Ann Miller was described as a "servant of all work" hired to help "make the cheese and all other things to be done in a farm house."[73] It sounds as though Ann Miller worked principally in the house – even if it was a "farm house" – and might once have been called a domestic servant, but her master was careful to add that she also helped make cheese – work done in a dairy on a nineteenth century farm – to avoid having to label her as one. On balance, it does not seem that Kenyon's exclusion of domestic servants from employment law coverage made a drastic difference in the number or share of cases involving female servants, but rather in their occupational descriptors.

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[72] KHLC, U2639/O1, Montagu Pennington, July 30th, 1827, p. 177.
[73] WCRO, QS 116/2/1/2, Atherstone Minute Books, August 4, 1846, p. 83.

I suggest that women's changing labour force participation contributed to the declining share of cases involving female servants over the course of the period. By way of illustration, we can take the example of Kent. Figure 5.6 shows that the nineteenth-century sources from this county contained smaller shares of cases involving female servants than the eighteenth-century sources. Notably, the nineteenth-century sources were drawn from arable regions. Agriculture in northern Kent, which was an important supplier of grain to London, centred on cereal production as well as the cultivation of hops and fruit.[74]

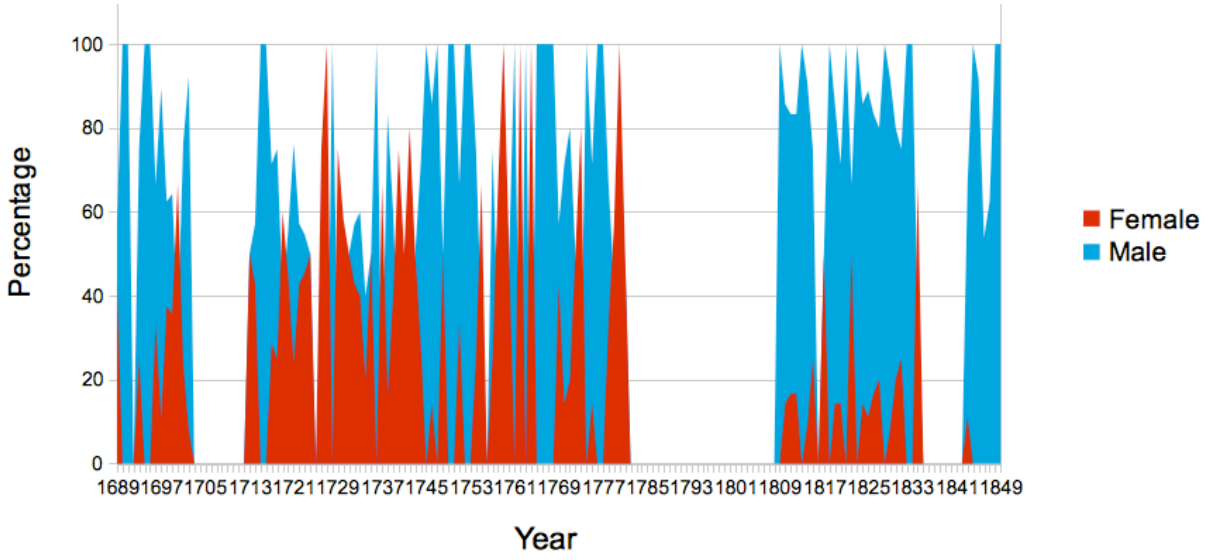

Figure 5.6 – Shares of Male and Female Servants in Employment Disputes in Kent

The region was also the scene of substantial agrarian unrest due to the increasing immiseration, unemployment, and underemployment of agricultural workers in the face of unprecedented population growth, the disbanding of forces after the Napoleonic Wars, and soaring poor rates.[75] These mounting tensions were reflected in the sources. Montague

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[74] Mingay, "Agriculture," 58.
[75] Dobson, "Population," 14-15; Paul Hastings, "The Old Poor Law, 1640-1834" *Religion and Society in Kent, 1640-1914*, ed. Nigel Yates, Robert Hume, Paul Hastings, Kent County Council (Woodbridge,

Pennington noted in 1830 that there had been instances of arson and machine breaking in the Wingham area.[76] A year later, he and two other magistrates committed seven men for breaking Mr. Marsh's threshing machine.[77] Edward Knatchbull recorded the trial of five men at Canterbury Quarter Sessions for breaking Sarah Matson's threshing machine. They had been part of a group of one or two hundred people who had gone to her house on the night of October 25, 1830. Sarah's daughter Caroline had begged them not to break the machine, insisting that their "workmen were contented" and they "employed many labourers." After "much conversation," a "man in a white hat" who appeared to be the ringleader said it was useless to resist and obliged Caroline to unlock the barn. They dragged the machine out and destroyed it.[78] In 1832, Zachariah Gardler complained at the Lathe of Scray petty sessions that he and his family had been asleep in bed when a group of plough servants had burst through his front doors. They punched him and ransacked the house.[79]

These areas – arable regions in the southeast where grain production was emphasized over pastoral agriculture, where men's real wages were also beginning to fall in the nineteenth century, and where the increasing impoverishment of labourers in husbandry contributed to unprecedented unrest – were the type of areas where Snell has stated that women were being driven out of agricultural employment.[80] Indeed, in the 1851 census, women made up just 4% of agricultural labourers and farm servants in Kent, compared to 13%, 15%, and 19% respectively

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Suffolk: The Boydell Press, 1994),114-116; K. D. M. Snell, "Agricultural Seasonal Unemployment, the Standard of Living, and Women's Work in the South and East, 1690-1860," *Economic History Review* 34 (1981): 420. The population of Kent doubled between 1788 and 1831. Dobson, "Population,"12.

[76] KHLC, U2639/O1, Montagu Pennington, October 1830, p. 195.

[77] KHLC, U2639/O1, Montagu Pennington, August 6, 1831, p. 201.

[78] KHLC, U951/O6, Sir Edward Knatchbull, November 25, 1830.

[79] KHLC, PS/US/ Sd/1, Lathe of Scray, March 22, 1832.

[80] Snell, "Agricultural Seasonal Unemployment," 48, 420.

in the more pastoral counties of Gloucestershire, Somersetshire, and Wiltshire.[81] Although there are problems associated with the occupational census returns, as will be discussed below, these figures are nevertheless suggestive. It seems that women's participation in agricultural work was declining.

Other scholars have sounded a note of caution, suggesting that Kent might represent a slight exception to Snell's argument about the decreasing employment of women in arable regions. Nicola Verdon observes that at 89%, the reported incidence of women's and children's involvement in harvest work in Kent was among the highest of counties responding to the 1834 Poor Law Report questionnaire. However, she concedes that we do not know "what respondents actually meant by 'the harvest,'" and confusion over whether gleaning counted as harvest work might account for the high returns in Kent.[82]

Barry Reay points out that while Snell has convincingly shown women's participation in farm work decreasing in the "corn lands of eastern England," there were important regional variations in this decline. The cultivation of fruit and hops in Kent ensured the continued presence of women in agricultural work in that county. Indeed, many women, who were considered better pickers than men, worked in the hop-grounds. However, hop-picking was paid by the bushel. Hop tying – done by the acre and almost exclusively undertaken by women – was also piece-work.[83] After *Hardy v. Ryle* (1829), in which Justice Bayley determined that "to be within the Act, the party must not only be included in the enumeration of persons to be affected

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[81] PP 1852-1853, Vol. 88, "Population Tables, 1851, Part II. Ages and Occupations. Volume 1. Report, England and Wales, I.-VI., Appendix," 1691-I, 65, 68, 345, 348, 369, 372, 445, 448; Snell, "Agricultural Seasonal Unemployment," 421. I have excluded land proprietors, farmers, graziers, and relatives of farmers, such as wives, children, grandchildren, and nieces and nephews when calculating these percentages.

[82] Verdon, *Rural Women's Work*, 56-57.

[83] Barry Reay, *Microhistories: Demography, Society and Culture in Rural England, 1800-1930* (Cambridge: Cambridge University Press, 1996), 109-110.

by it, but must also have 'contracted to serve,'" all work done by the job, piece, or task was effectively excluded from the jurisdiction of the master and servant laws.[84] Therefore, it seems that the kind of agricultural work that women continued to perform in arable areas was outside the coverage of employment law for most of the nineteenth century and would not have impacted their involvement in master and servant proceedings. None of the employment disputes in the sources from Kent involved hop pickers, before or after 1829. It was women's declining participation in farm service and day labour in the arable southeast that likely contributed to their declining shares in master and servant cases.

Qualitative evidence also suggests that fewer women were employed in farm work in arable areas. James Edwards was a substantial farmer in the Hampshire chalk lands. E. L. Jones has shown that over the course of the eighteenth century there was a shift in emphasis in chalk lands agriculture away from folding sheep toward growing grain. Arable acreage expanded and farmers invested in threshing machines.[85] James Edwards hired approximately 40 different men between 1800 and 1806 to work on his farms in various capacities, but only 8 women. The latter were either housemaids hired by the year, or the wives of male agricultural workers whom Edwards paid to prepare meals and tend to the chickens. For instance, he gave his carter John Lane 10 shillings and 6 pence for "his wife's dressing under carter's victuals & looking after

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[84] *Hardy v. Ryle* (1829), 9 B. & C. 603, 109 Eng. Rep. 224; Frank, "Britain," 404-405.

[85] E. L. Jones, "Eighteenth-Century Changes in Hampshire Chalkland Farming," *Agricultural History Review* 8 (1960): 5-19. It is worth noting that with the exception of the Lyndhurst petty sessions register, all of the sources in this dissertation from Hampshire – sources that we have already seen contained remarkably low shares of cases involving female servants – came from petty sessions divisions that at least partially covered the chalk lands. Moreover, women only made up 7% of agricultural workers in Hampshire in the 1851 census. White, *History, Gazetteer, and Directory of Hampshire*, 27-28; Ian West, Geology of Hampshire and the Isle of Wight [map] "Geology of Great Britain" http://www.southampton.ac.uk/~imw/jpg/hantmap.jpg; PP 1852-1853, Vol. 88, "Population Tables," 77, 80. However, it should also be noted that only 17% of workers in these Hampshire sources definitely worked in agriculture.

Fowles &c."[86] By contrast, the household account book that William Beach of Keevil, Wiltshire, kept between 1761 and 1773 shows that he hired male and female servants in roughly equal numbers.[87] The comparison is not perfect. Beach's account book dates from several decades earlier than that of Edwards. He also did not keep track as meticulously as Edwards did of the type of work he was hiring people to do. Since he seems to have been a wealthier man, it is possible that the majority of these women were domestic servants.[88] However, Beach's farms were in a dairying area, so it would not be surprising if he employed more female agricultural workers than Edwards, whose holdings were in an arable region.[89] Snell has shown that the wages and agricultural labour force participation of women were not declining in the pastoral west as they were in the arable southeast.[90]

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[86] HALS, 2M37/341, Farm Book, p.3.
[87] WSHC, 1665/4, Household Account Book of William Beach, 1761-1773.
[88] I have not been able to determine the exact holdings and fortunes of Edwards and Beach, respectively. Edwards' account book shows that he employed people on three different farms in the area of King's Somborne. By inheritance or purchase he managed by the early nineteenth century to reunite all the property of the manor of Compton Monceux. The Beach family property in Keevil was 800 acres. The family was mentioned in Burke's *Genealogical and Heraldic Dictionary of the Landed Gentry*. William Beach was wealthy enough that it caused consternation when his daughter Anne fell in love with the impoverished local curate. William allegedly locked her in her bedroom for two years to prevent the marriage, and eventually issued her with an ultimatum – she must choose the curate or her inheritance. Anne married the curate (though she would die just three month later), a fact that William recorded on the last page of his household account book – "my undutifull girl nanny elope'd." "Parishes: King's Sombourne," *A History of the County of Hampshire*, Volume 4, ed. William Page (London: Victoria County History, 1911), 469-480. *British History Online*, accessed April 3, 2017, http://www.british-history.ac.uk/vch/hants/vol4/pp469-480; "Keevil," *A History of the County of Wiltshire*, Volume 8, Warminster, Westbury and Whorwellsdown Hundreds (London: Victoria County History, 1965), 250-263. *British History Online*, accessed April 3, 2017, http://www.british-history.ac.uk/vch/wilts/vol8/pp250-263; Burke, *A Genealogical and Heraldic Dictionary*, 4th ed., Vol. 1 (1862), 72-73; Mrs. William Hicks Beach, *A Cotswold Family: Hicks and Hicks Beach* (London: W. Heinemann, 1909), 298-300; Michael Marshman, *The Wiltshire Village Book* (Newbury, Countryside Books, 1999); http://www.visitoruk.com/Devizes/keevil-C592-V8412.html; WSHC, 1665/4, Account Book.
[89] By 1801, there were just over 400 acres of arable land in the parish of Keevil. The Beach property alone was 800 acres. Much of the land was used "exclusively for dairying and stockraising." "Keevil," 250-263.
[90] Snell, "Agricultural Seasonal Unemployment," 421.

Interestingly, 24, or 41%, of the female servants in the Pre-Sentencing Database who definitely worked in agriculture after 1800 were explicitly called dairymaids, as opposed to just 2, or 6%, of them, before 1800. For instance, in the Bicester petty sessions records for the years 1834 to 1852, 15, or 65%, of the female agricultural workers – who altogether accounted for 23, or 61%, of female servants in Bicester employment disputes – were dairymaids. The farmer Richard King Foster of Wendlebury parish, about two and a half miles southwest of Oxford, seemed to have particular difficulties with his dairymaids. On July 8, 1839, he charged Susannah Turvey with misbehaviour, for which she was committed to the house of correction for 14 days. Four days after her release, she complained "about wages and her service." The magistrates directed her to go back to her place. A week later they discharged her without wages for absenting herself again.[91] Nine years later, Richard King Foster charged another of his dairymaids, Sarah Laffey, with running off. The JPs ordered her to return to her service with the costs of the proceeding deducted from her wages upon her promise to behave better in the future. This promise was quickly broken, since a week later they dismissed her without wages for absenting herself again, just three days after the previous hearing.[92]

It is worth noting that cases involving female servants made up 38, or 19%, of all the employment disputes in the Bicester petty sessions record. This share is higher than the average share of 13% for the second half of the period as well as the average of 9% for sources from the years 1830 to 1860. At the turn of the nineteenth century, Bicester had both arable farms and dairy farms. The district actually had a reputation for its butter, which was sent weekly to London in wagons. However, arable farming in the area collapsed after the Napoleonic Wars. By

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[91] OHC, Trum I/2, Bicester Petty Sessions, p. 38, 41-43.
[92] OHC, Trum I/4, Bicester Petty Sessions, p. 218, 223.

the 1860s Bicester had become a predominantly grazing parish and "a great many men" were unemployed.[93]

It is possible that women were involved in an above average share of master and servant disputes at the Bicester petty sessions because they made up a larger percentage of the district's agricultural labour force than they did in other areas in the mid-nineteenth century since they continued to be employed on dairy farms while their male counterparts struggled to find work due to the depressed state of grain cultivation in the region. As Table 5.4 shows, according to the 1851 census, women accounted for 9% of agricultural labourers and farm servants in Bicester, compared to 3% in the districts of Blean, Bridge, Dover, Eastry, and Thanet in northeastern Kent, the area encompassed by the Lathe of St. Augustine. The petty sessions records for the Home Division of the Lathe survive for the years 1843 to 1849, contemporaneously with those of the Bicester petty sessions. Table 5.4 reveals that agricultural workers made up approximately half of all servants in employment disputes in both records. While 23, or 23%, of these workers in the Bicester records were female, none in the Lathe of St. Augustine records were. The solitary case involving a female servant also made up only 2% of all the employment disputes at the latter petty sessions.

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[93] "The market town of Bicester," *A History of the County of Oxford*, ed. Mary D Lobel, Vol. 6 (London: Victoria County History, 1959), 14-56. *British History Online*, accessed March 14, 2017, http://www.british-history.ac.uk/vch/oxon/vol6/pp14-56.

	Bicester Petty Sessions	Lathe of St. Augustine Petty Sessions
Years Covered	1834-1852	1843-1849
Number of Cases	201	64
Number and Share of Cases Involving Female Servants	38 (19%)	1 (2%)
Number and Share of Cases Involving Agricultural Workers	101 (50%)	33 (52%)
Number/Share of Agricultural Cases Involving Female Workers	23 (23%)	0 (0%)
Number/Share of Female Agricultural Labourers and Farm Servants in 1851 Census	203 (9%)	209 (3%)

Table 5.4 – Comparing Bicester and Lathe of St. Augustine Petty Sessions
The 1851 census information is for the districts of Bicester in Oxfordshire, comprising the sub-districts of Bletchington and Bicester; and Blean (sub-districts: Sturry, Herne, and Whitstable), Bridge (sub-districts: Chartham, Barham), Dover (sub-districts: St. James, St. Mary, Hougham), Eastry (sub-districts: Sandwich, Wingham, Eythorn, and Deal), and Thanet (sub-districts: Minster, Margate, Ramsgate) in Kent. In calculating the totals of women and the share they made up of agricultural workers I used all the categories under Class IX, 'Agriculture,' except for 'Land Proprietor,' 'Farmer,' 'Grazier,' 'Farmer's Wife,' and the relatives of Farmers and Graziers (eg. daughters, sons, sisters, nieces, nephews, grandchildren). PP 1852-1853, Vol. 88, "Population Tables, 1851, Part II. Ages and Occupations. Volume 1. Report, England and Wales, I.-VI., Appendix."

Of course, there are difficulties with drawing firm conclusions from this evidence. There are serious problems with relying on the nineteenth century censuses for information about women's work.[94] Although householders were instructed in the 1851 census to record the occupations of women who were "regularly" employed away from home or at home "*in any but domestic duties*," they were not given any guidance as to whether part-time, casual, and seasonal work counted as 'regular.' Householders and enumerators varied significantly in the extent to which they considered that a woman's paid work superseded her 'domestic duties' – which were likewise ill-defined – and thus merited recording. Married women's occupational designations were frequently omitted. They were often classified by their marital status even when other sources such as wage books prove that they were employed outside the home. For instance,

[94] Verdon, *Rural Women's Work*, 16, 31-35.

known paper and woolen mill workers in Scotland were enumerated as 'wives,' leading historians to speculate that the notion of factory work being performed primarily by young, single women might be an illusion created by the census records.[95]

Moreover, there are problems with the census that likely impacted the data I have used here. Under Class IX, 'Agriculture,' there were numerous headings, including "farm servant (in-door." For men, this category comprised all agricultural labourers living in the farmhouse, such as waggoners, carters, grooms and "general servant[s]." For women, it comprised dairymaids and all "Female Servants living in farmhouses, except those employed in domestic duties as cooks, housemaids, nurses, &c."[96] As Higgs observes, there were no specific instructions provided about distinguishing between domestic service and farm work.[97] We have seen that women's duties often blurred the line between the two. A woman might cook or clean the house but also help to make cheese or feed the pigs. It is possible that women who did agricultural labour were returned as domestic servants by householders and enumerators who might have believed that any domestic duties outweighed any work done on the farm. Cross-referencing with wage books and oral histories indicates substantial under-enumeration of female labour in agriculture.[98]

Furthermore, the nineteenth century censuses were taken in March or April to avoid distortions caused by summer migrations. However, since householders and enumerators generally limited themselves to recording those occupations that household members held at the time, seasonal labour was omitted, such as women's work in the Kent hop fields.[99] Female and juvenile labour was very important to the cultivation of fruit and hops in northern Kent. In some

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[95] Higgs, "Women, Occupations, and Work," 63-64.
[96] PP 1852-1853, Vol. 88, "Population Tables, 1851, Part II. Ages and Occupations. Volume 1. Report, England and Wales, I.-VI., Appendix," 59, 62.
[97] Higgs, "Women, Occupations, and Work," 69.
[98] Horrell and Humphries, "Women's Labour Force Participation," 95.
[99] Higgs, "Women, Occupations, and Work," 67-68.

areas, such as Wingham, which was part of the Lathe of St. Augustine, farmers coerced women into working in market gardens by making their labour a condition of their families' cottage rentals. Women did not always have to be forced, though. Servant girls were said to frequently leave their service to go hop picking. The paper mills were short on female labour in the spring and harvest months as mill workers took to the hop fields. A contemporary observed that women of "almost every degree," even the daughters of well to do tradesmen and "farmers and yeomen of the first rank and best education," assisted in hop picking.[100] It seems that women made up a larger share of the agricultural workforce in the Lathe of St. Augustine than the census data indicates, at least at certain times of the year.

Despite the problems with the census data, it is nevertheless suggestive. Even if women were consistently under-counted as farm workers in the censuses, other sources confirm that there was a downward trend in female employment in agriculture from the end of the eighteenth century. For instance, Horrell and Humphries have used data from household budgets to show a general decline in married women's participation in the agricultural labour force over the first half of the nineteenth century.[101] It is telling that cases involving female servants accounted for a much higher proportion of all employment conflicts at the Bicester petty sessions – held in a pastoral farming region where women were probably employed in higher shares in agriculture than they were in the arable north of Kent – than they did at the Lathe of St. Augustine petty sessions.

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[100] Richardson, "Labour," 241-243, 255. Mingay, "Agriculture," 58; Reay, *Microhistories*, 109.
[101] Horrell and Humphries, "Women's Labour Force Participation," 90, 112.

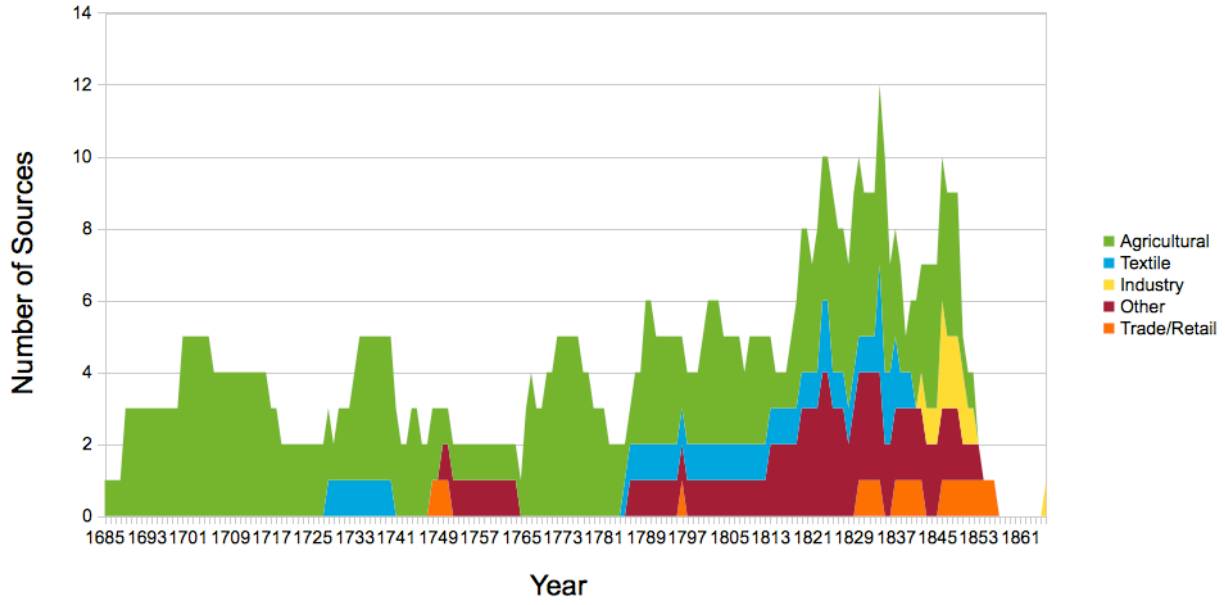

Figure 5.7 – Number of Sources From Different Economic Regions Per Year in the Pre-Sentencing Database

The majority of sources in the Pre-Sentencing Database – 36, or 63% of them – were drawn from agricultural regions. As Figure 5.7 shows, these were the most numerous types of sources over most of the period. The division of sources into economic regions is not perfect. Some sources were hard to categorize or covered regions with diverse economies. For instance, the early nineteenth-century magistrate Thomas Netherton Parker was based in the Morda Valley in Shropshire, where the majority of inhabitants made their living through agriculture. Yet only 14, or 14%, of the workers in his employment hearings were described as engaged in farming. A further 29, or 28% of them, were simply identified as 'servants' and another 44, or 43%, had no occupational descriptors. Given the economic make-up of the region, it is reasonable to assume that many of these workers were employed in agriculture as well. However, since the late eighteenth century several industrial enterprises had also sprung up in the area, including mines

and mills, which also generated employment disputes demanding Parker's attention.[102] For instance, Henry Warren and John Roberts, the proprietors of a calico print works and a cotton mill in the Morda Valley, charged Mary Evans and Edward Jones on separate occasions with quitting their service.[103]

Still, Figure 5.6 is useful for establishing that the declining share of employment cases involving female servants seems to be at least partially the result of the sources examined in the dissertation. Since most of them came from predominantly agricultural areas, where women's labour force participation was decreasing, it stands to reason that female servants would make up a declining share of disputants in master and servant cases.

Textile Workers

While women were being driven out of employment in arable agriculture in the southeast, they made up substantial proportions of the workers in the textile industries.[104] These industries combined putting-out systems and factory organization, and both the 'traditional' and 'modern' sectors, which coexisted symbiotically, expanded through the eighteenth and early nineteenth centuries.[105] It is not surprising, therefore, that textile areas are exceptions to the trend of decreasing shares of employment disputes involving female servants.

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[102] Steedman, *Labours Lost*, 190.
[103] SA 1060/168, Thomas Parker, September 15, 1805; September 28, 1805; Barrie Stuart Trinder, *The Industrial Archaeology of Shropshire* (Phillimore & Company, 1996), 140. Parker was more sympathetic to Mary Evans, who had left work to attend her ill mother, than he was to Edward Jones, who had apparently run away for the second time. He ordered the former to pay the expenses, and the latter to pay the expenses and a fine and threatened to commit him to the house of correction if he absconded again.
[104] Berg, "What Difference," 29, 30-35, 40.
[105] Berg, "What Difference," 29, 30-35, 40; Berg, *Age of Manufactures*, 30; Berg and Hudson, "Rehabilitating the Industrial Revolution," 30-32; Berg, *The Machinery Question*, 29; Berg, "Factories," 147.

	1685-1780		1780-1860	
Number of Sources	**Textile**	**Agriculture**	**Textile**	**Agriculture**
Containing workers in these categories	4	15	8	30
≥10% of all workers are in these categories	2	13	4	24
≥10% of workers in these categories + share of female servants ≥ average	1 (50%)	7 (54%)	3 (75%)	11 (46%)

Table 5.5 – Workers in Textile Industry and Agriculture in Both Halves of Period Covered by the Pre-Sentencing Database

The percentage in parentheses is the share of all sources containing 10% or more of workers in each occupational category that also contain shares of employment disputes involving female servants 13% or higher.

Table 5.5 summarizes the number of sources in each half of the period conclusively containing cases involving textile workers, as well as those conclusively containing cases involving agricultural workers. The table illustrates further how many of these sources had shares 10% or higher of all workers in employment disputes made up by either textile or agricultural workers. Finally, it shows how many of these latter sources also contained overall shares of cases involving female servants equal to or higher than the average in each period – 26% in the first period and 13% in the second, as we have seen. After 1780, there was a stronger correlation between sources with above average shares of cases involving female servants and sources with substantial portions of all workers employed in the textile industries than there was between the former type of sources and those with substantial shares of workers employed in agriculture.

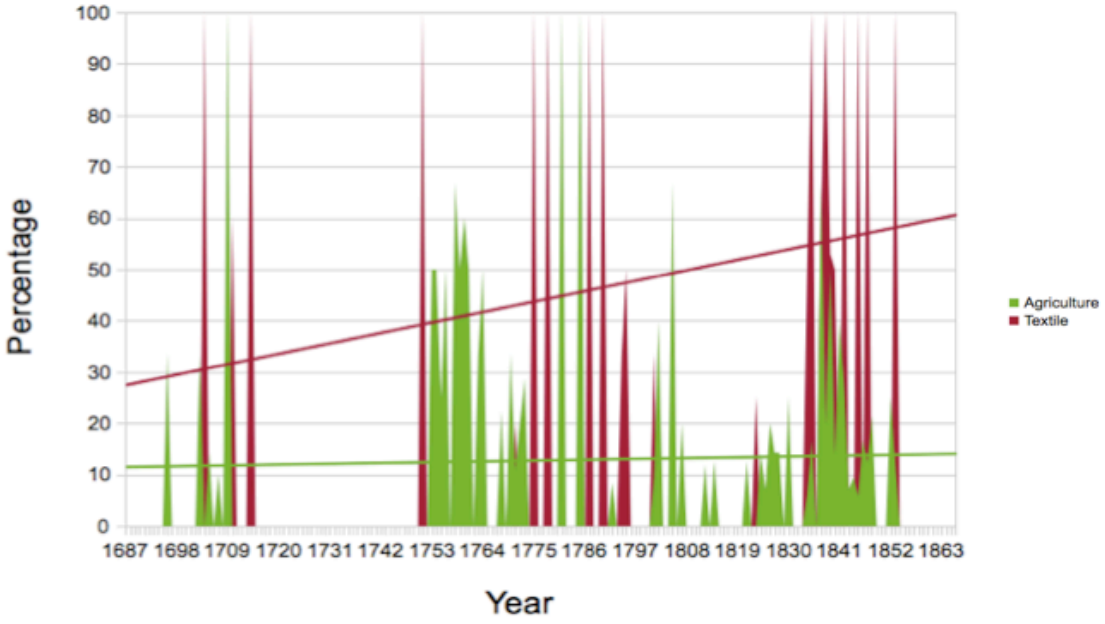

Figure 5.8 – Chronological Shares of Agricultural and Textile Workers Made Up By Women in the Pre-Sentencing Database

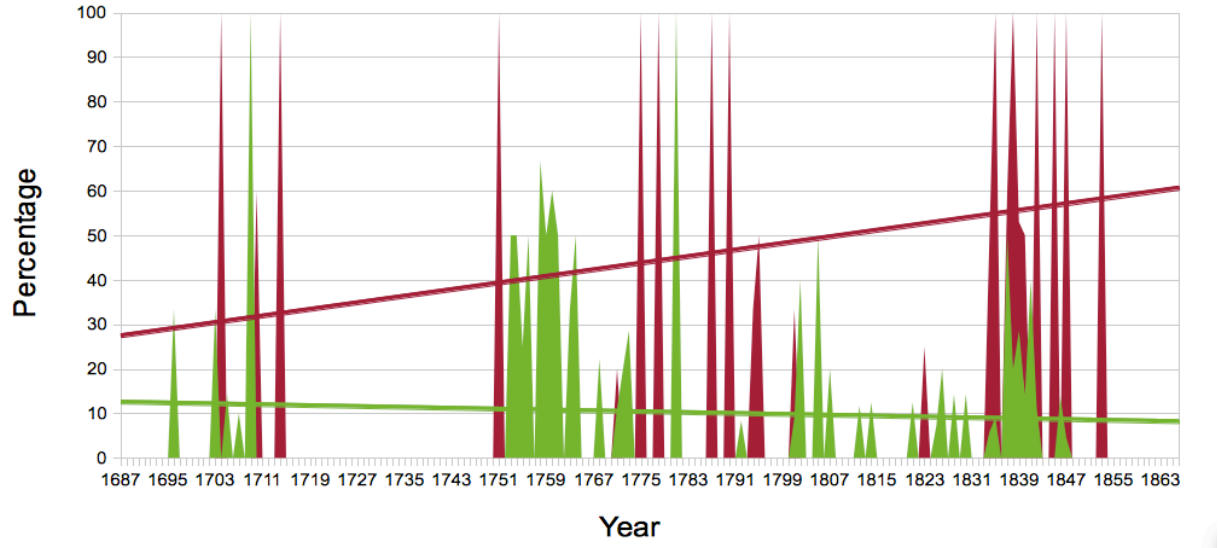

Figure 5.9 – Chronological Shares of Textile and Agricultural Workers Excluding Dairymaids Made Up By Women in the Pre-Sentencing Database

Moreover, as Figures 5.8 and 5.9 demonstrate, the shares made up by women of all textile workers and of all agricultural workers except dairymaids were respectively moving in inverse directions over the course of the period. When dairymaids are excluded from the sample to better

reflect the way that female labour was being driven out of arable farming in the southeast, we can see that women were declining as a proportion of all agricultural workers. On the other hand, the shares made up by women of textile workers were consistently high and even tended to increase. If more sources from textile-producing regions had been included in the Pre-Sentencing Database, the decline in the share of cases involving women workers might have been less pronounced or more delayed in its onset.

Type of Work	Women	Men
Apprentice	12 (2%)	316 (12%)
Agricultural	90 (13%)	591 (22%)
Construction/Brickmaking	0 (0%)	121 (5%)
Domestic Service	20 (3%)	0 (0%)
Labourer	3 (0.4%)	167 (6%)
Mariner/Fishing	0 (0%)	65 (2%)
Metal Work/Smithing	0 (0%)	17 (0.6%)
Mining	0 (0%)	16 (0.6%)
Railway	0 (0%)	57 (2%)
Salt Worker	16 (2%)	1 (0.03%)
Servant	297 (44%)	423 (16%)
Trade/Handicraft	2 (0.2%)	96 (3%)
Textile	51 (8%)	70 (3%)
Other	17 (2%)	47 (2%)
Unknown	172 (25%)	677 (25%)
Total	**680**	**2664**

Table 5.6 – Occupations of Female and Male Workers in Pre-Sentencing Database
The percentages given in parentheses are the shares of all workers of that gender made up by workers of the specific category.

Of course, there are some problems with identifying workers based on occupational descriptors in magistrates' notebooks and petty sessions records. As Table 5.6 shows, no description was provided in 172 cases involving female workers, or 25% of them. In another 297 cases, or 44% of them, women were simply described as 'servants.' However, it is very likely that some of these 'servants' and women of unspecified occupation were agricultural workers.

For instance, the first time that the dairymaid Susannah Turvey appeared at Bicester petty sessions in a dispute with Richard King Foster, the clerk simply noted a "complaint about wages and her service." It was only at a subsequent hearing about her absenting herself a week later that she was identified as Foster's dairymaid.[106] If Turvey and Foster had never returned with another grievance, I would not have been able to categorize her as an agricultural worker in the database.

There must be other women who worked in agriculture but were never described as labourers or servants in husbandry. William Brockman, for one, labelled most female workers simply as "servants," but this does not preclude the possibility that they were engaged in agricultural pursuits. Many disputants in his notebook, such as the "servant" Elizabeth Browne and her master, who had turned her away without paying her wages, lived in the fertile rural parish of Lyminge, where the majority of inhabitants were engaged in agricultural pursuits.[107] Elsewhere in the notebook, Lyminge residents, such as the "husbandman" Lawrence Green, or an unnamed "husbandwoman," were explicitly identified with agriculture.[108] The odds are good that some of the other parishioners of Lyminge appearing in employment disputes also worked in husbandry, even if Brockman did not specifically record the fact. Still, the undercounting of women employed in agriculture does not necessarily affect the shares represented in Figures 5.7 and 5.8 substantially, since men employed in agriculture were likely also undercounted for the same reasons as their female counterparts.

There are probably fewer textile workers than agricultural workers who were not identifiable by occupation. More of the sources for this dissertation are drawn from agricultural

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[106] OHC, Trum I/2, Bicester Petty Sessions, p. 38, 41-43.
[107] BL, MSS Add. 42598, William Brockman, p. 83; GB Historical GIS / University of Portsmouth, History of Lyminge, in Shepway and Kent | Map and description, A Vision of Britain through Time [http://www.visionofbritain.org.uk/place/6268; Date accessed: 15th February 2015]
[108] BL, MSS Add. 42598, William Brockman, p. 54, 33.

areas than textile areas, so there are fewer opportunities for textile workers to be undercounted. Moreover, the disputes in which agricultural servants were involved do not necessarily shed light on the type of work they performed. For instance, a worker might complain about unpaid wages and if the presiding magistrate or clerk did not identify her as a servant in husbandry there would be no way to deduce that she was one without other contextual clues. However, many textile workers were identifiable as such because of the nature of the offences they committed, even if they were not given a specific occupational label. For example, at the Tewkesbury petty sessions Catherine Anderson, "the wife of John," was charged by a Nottingham hosier's agent with neglecting to work up cotton materials entrusted to her.[109] In Northamptonshire, Sir Thomas Ward granted a warrant against Elizabeth Taylor for "reeling some short yarn."[110] These women were clearly employed in the putting-out system even if they were not described as 'spinners' or 'weavers.'

Offences Committed by Textile Workers

It appears that female textile workers were exceptions to the general trend we have observed of women being involved in a declining share of employment disputes. Notably, they were also exceptional in their rates as defendants. Table 5.7 shows that 47 female textile workers, or 92% of them, as well as 63, or 90%, of their male counterparts, were defendants in employment conflicts. No other female occupational categories had such skewed ratios of defendants to plaintiffs except for workers engaged in trades and handicrafts and salt workers. However, there were only two women represented in the former category. Thus, the fact that both of them were defendants rather than complainants is probably not very significant,

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[109] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, February 14, 1845, June 28th, 1845, p. 175, 182.
[110] WCRO, CR162/688, Sir Thomas Ward, January 13, 1772.

especially given that men in this category, who comprise a larger sample, were actually plaintiffs more often than defendants.

Type of Work	Female Servants		Male Servants	
	Plaintiff	**Defendant**	**Plaintiff**	**Defendant**
Apprentice	6 (50%)	6 (50%)	109 (35%)	198 (63%)
Agricultural	40 (44%)	49 (54%)	276 (47%)	308 (52%)
Construction/Brickmaking	0 (0%)	0 (0%)	82 (68%)	39 (32%)
Domestic Service	9 (45%)	11 (55%)	0 (0%)	0 (0%)
Labourer	1 (33%)	2 (67%)	115 (69%)	52 (31%)
Mariner/Fishing	0 (0%)	0 (0%)	36 (55%)	29 (45%)
Metal Work/Smithing	0 (0%)	0 (0%)	7 (41%)	10 (59%)
Mining	0 (0%)	0 (0%)	9 (56%)	7 (44%)
Railway	0 (0%)	0 (0%)	55 (96%)	2 (4%)
Salt Worker	2 (12.5%)	14 (87.5%)	0 (0%)	1 (100%)
Servant	124 (42%)	127 (43%)	115 (27%)	251 (59%)
Trade/Handicraft	0 (0%)	2 (100%)	54 (56%)	42 (44%)
Textile	4 (8%)	47 (92%)	7 (10%)	63 (90%)
Other	12 (71%)	5 (29%)	25 (53%)	21 (45%)
Unknown	117 (68%)	45 (26%)	336 (50%)	326 (48%)
Total	**315**	**308**	**1226**	**1349**

Table 5.7 – Shares of Male and Female Plaintiffs and Defendants By Occupation in Pre-Sentencing Database

The percentage in parentheses refers to the share of all workers of that gender and occupational category made up by plaintiffs and defendants. The percentages do not always equal 100% because in some cases the workers were 'mutually consenting' to the dissolutions of their contracts or could not be categorized as either plaintiffs or defendants.

As for the salt workers, all of them were found in the notebook of the Reverend Edmund Tew (1700-1770). After serving as the vicar of a Cambridgeshire parish where he was "too often non-resident," as he afterwards admitted contritely in his will, Tew settled in Durham at the age of 35 when he was appointed to the prosperous living of Boldon. He remained there as rector until his death, taking an active part in local committee and charity work and serving as governor of Newcastle Infirmary. In 1750, he was named a justice of the peace for Durham – one of a growing number of clerical appointees to the magisterial bench, especially in this county, where the Bishop retained a strong influence over the composition of the commission. That same year, after taking out his *dedimus*, Tew began keeping a notebook of his justicing business, which has

been transcribed and published for the Surtees Society by Gwenda Morgan and Peter Rushton. His entries ended in 1764.[111]

In the fourteen-year span covered by his notebook, Tew was a busy magistrate. He sat multiple times a month. Employment disputes comprised a substantial share of his overall business, as much as a third or more. Though Boldon was a rural farming community, the bulk of Tew's cases came from the urbanizing parishes along the Tyne and Wear rivers thanks to his situation midway between them. These regions were growing rapidly and beset by the problems of fluctuating industries, unrest, and seasonal employment. Keelmen, who loaded coal onto shallow-draughted boats for transportation to ships, dominated the economy of the Wearside communities, while other industries connected with seafaring, such as shipbuilding and ropemaking, were increasing. Saltmaking was the predominant activity of the Tyneside parishes.[112]

Female and juvenile labour was important in the saltmaking industry, despite its requirement of "sheer physical strength." Women formed a significant proportion, sometimes as much as 40%, of the saltmaking workforce into the nineteenth century, before the Factories and Workshop Extensions Act of 1867 limited their hours. Nor was this a new development. A sixteenth-century print depicting a saltworks included a female worker in the foreground.[113] Thus it is not surprising that 14 of the salt workers that Tew encountered, or 89% of them, were

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[111] Gwenda Morgan and Peter Rushton, introduction to *The Justicing Notebook (1750-64) of Edmund Tew, rector of Boldon*, ed. Gwenda Morgan and Peter Rushton, Suretees Society Publications, Vol. 205 (Woodbridge: Boydell and Brewer, 2000), 1-4.

[112] Morgan and Rushton, Introduction, 5-10; Hay, "England," 98. The sea salt industry, which relied on large amounts of coal to heat the iron pans where seawater was evaporated, was centred here on the northeast coast of England and along the banks and estuary of the River Forth in Scotland. It was declining in the eighteenth century in the face of competition from the brine and rock-salt industries of Merseyside. Christopher A. Whatley, "Saltmaking and Salters," *Britain in the Hanoverian Age, 1714-1837: An Encyclopedia* eds. Gerald Newman, Leslie Ellen Brown (Taylor & Francis, 1997), 623.

[113] Brian Didsbury, "Cheshire Saltworkers," *Miners, Quarrymen and Saltworkers*, ed. Raphael Samuel (London: Routledge, 1977), 154-155; Plate 15.

women. Half of the employers were also women. As Table 5.6 shows, 87.5% of these female salt workers were defendants in employment disputes. Like Sarah Callender, who left the saltpans of Isable Brown, they had all either run off or refused to come serve as bargained in the first place.[114] It is likely that most of the female salt workers encountered by Tew were defendants and not plaintiffs because the high demand for their labour encouraged desertion in favour of better-remunerated opportunities.[115] Employers needed a magistrate to compel their workers to stay.

	Female	Male
Apprentice	32 (9%)	296 (17%)
Agricultural	41 (11%)	213 (12%)
Construction/Brickmaking	1 (0.2%)	27 (2%)
Domestic Service	1 (0.2%)	2 (0.1%)
Housework	20 (6%)	0 (0%)
Labourer	49 (14%)	513 (29%)
Mariner/Fishing	0 (0%)	17 (1%)
Metal Work/Smithing	9 (3%)	93 (5%)
Mining	0 (0%)	91 (5%)
Potter	13 (4%)	167 (9%)
Railway	0 (0%)	1 (0.05%)
Servant	89 (25%)	105 (6%)
Spinster/ Single woman	19 (5%)	0 (0%)
Trade/Handicraft	0 (0%)	104 (6%)
Textile	36 (10%)	37 (2%)
Other	2 (0.5%)	12 (0.6%)
Unknown	46 (13%)	69 (4%)
Total	**358**	**1747**

Table 5.8 – Occupations of Male and Female Workers in Post-Sentencing Database
The percentage in parentheses indicates the share of all workers of that gender made up by workers of each occupational category.

Like salt workers, textile workers were also overwhelmingly defendants in employment disputes because of a concerted attempt to impose industrial discipline on them. A closer look at

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[114] *The Justicing Notebook of Edmund Tew,* 82.
[115] Hay, "Master and Servant," 235.

the prosecution of textile workers in the dissertation's sources can shed light on the way that employment law could be used to extract obedience and productivity from, and enforce the subordination of, a key workforce in a time of momentous economic transformation. Moreover, this was a notably feminized workforce. As we saw in Table 5.6, 51, or 8%, of all the women in the Pre-Sentencing Database were employed in the textile industries, compared to 70 men, or 3% of them. Women also accounted for 44% of all textile workers in that database – a much higher share than they did of workers overall. In the Post-Sentencing Database, as Table 5.8 shows, women accounted for at least 36, or 49%, of textile workers. They made up 56, or 60% of them, if the women who were engaged in "housework" are counted as textile workers.

All of the women described as doing "housework" were inmates in the house of correction at Northleach in Gloucestershire. Although 'housework' had definitely taken on its modern definition of housekeeping, especially cleaning and tidying, by at least the mid-nineteenth century, it originally seems to have referred to a domestic vocation or sphere.[116] By 'housework,' the clerk filling in the Northleach register could well have meant work that was literally conducted in the house. This might include working up textile materials as part of the domestic putting-out industry. It is telling that embezzlement accounted for 7, or 35%, of the offences committed by so-called houseworkers. Indeed, 88% of all female embezzlers in Northleach were described as engaged in 'housework.' For instance, Mary Humphries was imprisoned in April 1792 for embezzlement and described as doing housework.[117] The sentencing magistrate in her case was the Reverend Charles Coxwell, seated at Ablington Manor

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[116] "house, n.1 and int.". OED Online. March 2017. Oxford University Press. http://www.oed.com.ezproxy.library.yorku.ca/view/Entry/88886?redirectedFrom=house+work (accessed April 09, 2017).

[117] GA, Q/GN/4, Northleach House of Correction Register of Prisoners, 1791-1816, Prisoner 20, April 5, 1792.

in Bibury.[118] A rural parish in the Cotswolds, Bibury boasted a woollen industry centred in the hamlets of Arlington and Ablington until the mid-eighteenth century.[119] Although it must have been declining by the 1790s, as most of the Gloucestershire cloth trade was, it might still have provided employment for some women and men, among their number perhaps Mary Humphries.

	Female Workers	Male Workers
Destruction of Property	2 (4%)	0 (0%)
Embezzling	23 (49%)	46 (73%)
Neglecting/Leaving Work Unfinished	0 (0%)	2 (3%)
Refusing to come serve	1 (2%)	2 (3%)
Running Away	18 (38%)	12 (19%)
Theft	2 (4%)	1 (2%)
Unclear	1 (2%)	0 (0%)
Total	**47**	**63**

Table 5.9 – Offences Committed by Textile Workers in Pre-Sentencing Database
The percentage in parentheses indicates the share of all offences committed by textile workers of that gender made up by each category of grievance.

	Female Workers	Male Workers
Destruction of Property	1 (3%) [1 (2%)]	0 (0%)
Disobedience/Misbehaviour	1 (3%) [1 (2%)]	5 (14%)
Embezzling	2 (6%) [9 (16%)]	7 (19%)
Neglecting/Refusing work	8 (22%) [10 (18%)]	3 (8%)
Refusing to Come Serve	1 (3%) [1 (2%)]	0 (0%)
Running Away	23 (64%) [34 (61%)]	22 (59%)
Total	**36 [56]**	**37**

Table 5.10 – Offences Committed by Textile Workers in Post-Sentencing Database
The percentage in parentheses indicates the share of all offences committed by textile workers of that gender made up by each category of grievance. The figures in square brackets in the female workers' column indicate the numbers and shares in each category if the 20 women labelled as doing 'housework' in Northleach are counted as textile workers.

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[118] Edward Walford, *The County Families of the United Kingdom, Or, Royal Manual of the Title and Untitled Aristocracy of Great Britain and Ireland*, 5th ed. (London: Robert Hardwicke, 1869), 245.
[119] "Bibury," *A History of the County of Gloucester*, Volume 7, ed. N. M. Herbert (Oxford: Oxford University Press for Victoria County History, 1981), 21-44, accessed October 8, 2015, http://www.british-history.ac.uk/vch/glos/vol7/pp21-44.

As Tables 5.9 and 5.10 reveal, embezzlement of materials was one of the offences committed most frequently by textile workers – and the most common offence in the Pre-Sentencing Database. We saw in Chapter Three that the eighteenth century witnessed an increase in legislation criminalizing industrial embezzlement, which encompassed a range of behaviour. Some embezzlers had retained the materials entrusted to them. For instance, the weaver John Gammage accused the Northamptonshire spinner Elizabeth Brown of keeping back three pounds of jersey.[120] As we have seen, the accused did not necessarily need to have intentionally appropriated these materials – even failing to return them promptly enough could be construed as embezzlement under the 1749 and 1777 statutes.[121] Matilda Dobbins was charged by her master, the stocking maker John Yarnold, after she neglected to "work up cotton materials…within 7 days after being required to do so." The magistrates of the Tewkesbury petty sessions dismissed the complaint against her because she proved to their satisfaction that she had not embezzled the cotton but had simply been too ill to do the work yet.[122]

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[120] WCRO, CR162/688, Sir Thomas Ward, March 6, 1775.
[121] Soderlund, *Law, Crime and Labor*, 257-261.
[122] GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, September 9, 1853, p. 393. The Victoria County History of Gloucestershire suggests that stocking knitting, once the chief trade of Tewkesbury, "may have largely disappeared from the town between 1773 and 1792, for there is no substantial evidence of it in the 19th century." John Yarnold, the stocking maker who employed Matilda Dobbins, might well have lived in Nottingham. A John Yarnold "stocking maker" living in Nottingham, aged 47, appears in the 1881 census. In 1871 and 1861 he was listed as a "framework knitter." As we saw already, Catherine Anderson was charged at the Tewkesbury petty sessions with neglecting to work up cotton materials entrusted to her by John Rogers, a "Nottingham Hosier." It seems that manufacturers in Nottingham were employing women in the vicinity of Tewkesbury to work up their cotton materials. Berg notes that the organizational system of the framework knitting industry that emerged in Nottingham after the introduction of silk and cotton mix stockings in the eighteenth century was characterized by large-scale hosiers operating "vast putting-out systems and centralised units," and knitters who were "largely degraded outworkers." "The Borough of Tewkesbury: Economic history," *A History of the County of Gloucester*, Volume 8, ed. C R Elrington (London: Victoria County History, 1968), 137-146. *British History Online*, accessed July 15, 2017, http://www.british-history.ac.uk/vch/glos/vol8/pp137-146; https://www.ukcensusonline.com/search/index.php?fn=john&sn=yarnold&event=1871&phonetic_mode=1&year=&range=0&token=HGWhK5u0HYy3nu4M03b1esjkFInWyRY0k50Rxdb5eHg&search=Search;

Other defendants, such as the Northamptonshire spinner Elizabeth Taylor, and the Wiltshire flax spinners Ann Rutley and Bridget Hunt, were charged with reeling short yarn.[123] This was a practice whereby spinners would use reels with shorter circumferences than the customary standard in order to have more leftover raw material, which they could then appropriate.[124] There was a "massive increase" in the number of women charged with short and false reeling after the passage of the Worsted Acts between 1777 and 1791. These statutes established committees of worsted manufacturers in almost a third of English counties, beginning with Yorkshire, Lancashire, and Cheshire. The committees appointed inspectors who served as "semi-official industrial police forces." Technically they were tasked with detecting and prosecuting all types of embezzlement, but in practice they primarily targeted false and short reeling.[125]

Gender shaped this pattern of litigation. Valenze suggests that masters and inspectors focused on prosecuting spinners, a chiefly female workforce, because women's many responsibilities in addition to spinning might have hindered them from completing their work on time as well as preventing their participation in labour organizations and trade unions.[126] While concurring that the aim of the Worsted Acts was the enforcement of workplace discipline on a mainly female labour force, Soderlund disagrees that the industry and lawmakers were exploiting a lack of female unionization. Rather, he argues that worsted manufacturers were attempting to

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GA, PS/TW/B/M1/1, Tewkesbury Petty Sessions, February 14, 1845, June 28th, 1845, p. 175, 182; Berg, "Factories," 132.

[123] WCRO, CR162/688, Sir Thomas Ward, January 13, 1772; WSHC, 383/955, September 15, 1794.

[124] Styles, "Embezzlement," 176.

[125] John Styles, "Policing a Female Workforce: The Origins of the Worsted Acts," *Conference Reports: Bulletin for the Society for the Study of Labour History* (1987): 39; Styles, "Spinners and the Law," 145-147.

[126] Valenze, *First Industrial Woman*, 74; Richard J. Soderlund, "Resistance from the Margins: The Yorkshire Worsted Spinners, Policing, and the Transformation of Work in the Early Industrial Revolution," *International Review of Social History* 51 (2006): 229.

resolve irregularities in the supply and quality of yarn, which were causing a bottleneck in production. By clamping down on false and short reeling through the use of inspectors, they hoped to reestablish a fixed relationship between output and payment and so bring the discipline of a low wage to bear on spinners, who were believed to be insufficiently industrious. Without embezzled material supplementing their incomes, spinners would be forced to work harder and produce more yarn in order to earn a living. The yarn bottleneck would be remedied, along with the women's "desultory" habits. Soderlund acknowledges that gender played an enormous role in shaping this policy. Spinners' wages were characterized as "excessive" despite the fact that they earned far less than the (exclusively male) wool combers because as a "feminized" occupation spinning was considered unskilled and unworthy of high wages. It was easy to argue that women's work, already so little valued, was overpaid.[127]

My data confirms that compared to women's average shares as defendants in employment disputes – 18% in the Pre-Sentencing Database and 17% in the Post-Sentencing Database – they were overrepresented among embezzlers. They made up 23, or 34% of all embezzling textile workers in the Pre-Sentencing Database, and 2, or 29% of them, in the Post-Sentencing Database – or 9 (56%) of them, if the Northleach houseworkers are counted as textile workers.

The regional origins of the dissertation's sources help to explain why the shares of women being prosecuted for textile embezzlement were not even higher, given the fact that the Worsted Acts were used to target female workers. Some of the textile areas represented in the dissertation happened to be centres of weaving, which was traditionally a male occupation –

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[127] Soderlund, "Intended as a Terror,"658-661; Soderlund, "Resistance from the Margins," 229-230.

though women also practiced it to a lesser extent.[128] For instance, one of the nine sources in the Pre-Sentencing Database containing cases of textile embezzlement was the notebook of Northamptonshire magistrate Sir Thomas Ward. He presided in Guilsborough, which, as we saw in Chapter Three, had a large population of (male) weavers – the highest of any Northamptonshire hundred in 1777. Thus, it is not surprising that only 4, or 17%, of the textile embezzlers Ward encountered were women. It is unlikely that this share would have been higher even if his records had not ended seven years before the passage of 25 Geo.III c. 40 (1785), the Worsted Act establishing a committee and inspectorate in Northamptonshire. Using newspaper reports and Quarter Sessions conviction presentments, Keith Sugden has shown that 325 Northamptonshire spinners were found guilty under this statute between 1785 and 1800. The majority of them were concentrated along or near the turnpike road from Leicester to Huntingdon that ran through Kettering and Market Harborough. The numbers of prosecuted spinners were far lower in the parishes of Guilsborough hundred.[129]

By comparison, the magistrate Richard Colt Hoare lived in an area where women were beginning to feature more prominently in the local textile industry. In 1785, the year that his justicing notebook begins, he inherited the estate of Stourhead near Mere in southwestern Wiltshire.[130] Thanks to Mere's location at the edge of a region of flax cultivation, linen weaving was its dominant textile industry in the eighteenth century. At the time Hoare moved to Stourhead and began his magisterial career, linen weaving was declining in Mere, although the

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[128] Berg, *Age of Manufactures*, 204.
[129] Keith Sugden, "The Occupational and Organizational Structures of the Northamptonshire Worsted and Shoemaking Trades, circa 1750-1821," (Master's Thesis, University of Cambridge, 2011), 7, 24-25, 30-31. http://www.geog.cam.ac.uk/research/projects/occupations/abstracts/dissertationsugden.pdf; Styles, "Spinners and the Law," 147.
[130] Victoria Hutchings, "Hoare, Sir (Richard) Colt, second baronet (1758–1838)," *Oxford Dictionary of National Biography* (Oxford University Press, 2004); online edn, May 2009 [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/13387, accessed10 April 2017].

"linman" John Jupe opened the first flax-spinning mill there at the end of the century. Silk throwing, which relied primarily on the labour of young women, arrived in Mere contemporaneously with the decline of the linen industry and by the early nineteenth century had replaced it in importance.[131]

Though his notebook technically covered the period until 1834, Hoare was an avid traveler who was frequently away on tours, so there were often lengthy periods without entries, especially after 1802.[132] He did the bulk of his justicing business during the time that Mere was transitioning from linen to silk – from weaving to spinning. This transition was reflected in the embezzlement cases that Hoare heard. The male offenders, such as William Shepperd and the repeat offender William Hill, were linen weavers.[133] Betty Gatehouse, who was charged alongside William Hill in 1796, was also a linen weaver, or at least doing work for one. Her master was Giles Forward, a member of an important linen family in Mere, and the plaintiff in both of Hill's cases.[134] It is also possible that Gatehouse was a flax spinner like the other female embezzlers prosecuted in the 1790s, including Hannah Lawrence, who in 1794 refused to return the flax entrusted to her by Henry Plucknett Hindley, a well-known tick merchant.[135] Hoare heard his final embezzlement case in 1801. He sentenced Elizabeth Dowdey and her daughters Elizabeth the Younger and Mary to the Devizes bridewell for embezzling from Mr. Maggs, who owned a silk throwing mill in Mere.[136]Given that there were more employment opportunities for

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[131] M. F. Tighe, "Silver Threads: A Study of the Textile Industries of Mere," *Mere Papers* 3 (Friends of the Church of St. Michael the Archangel, 1997), http://www.mere-wilts-heritage.info/new_page_1.htm, accessed March 31, 2017.
[132] Hutchings, "Hoare, Sir (Richard) Colt." [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/13387, accessed10 April 2017].
[133] WSHC, 383/955, October 15, 1796.
[134] WSHC, 383/955, JP Notebook of Sir Richard Colt Hoare, 1785-1815, September 25, 1796; Tighe, "Silver Threads."
[135] WSHC, 383/955, Richard Colt Hoare, September 15, 1794; Tighe, "Silver Threads."
[136] WSHC, 383/955, Richard Colt Hoare, March 30, 1801; Tighe, "Silver Threads."

female textile workers, as flax spinners and, increasingly, silk throwers, in Mere than in the predominantly weaving district of Guilsborough, it is not surprising that women made up a larger share of embezzlers in Hoare's notebook than in Ward's. They were involved in 4, or 57%, of the embezzlement complaints he heard.

Other sources drawn from regions with significant textile industries did not boast large shares of female embezzlers because the women were primarily employed in mills rather than the putting-out industry. Female mill workers tended not to be charged with embezzlement. Barry Godfrey has argued that by the mid-nineteenth century, when most textile production had moved into factories, women were being prosecuted for embezzlement far less often than men even though they made up a majority of mill workers. He suggests a number of explanations for this discrepancy: women were deterred from embezzling because their reputations suffered more acutely from stints of imprisonment than men's did; women had fewer opportunities to embezzle in factories because of their restricted mobility on the premises; their relative lack of skill compared to male co-workers meant that manufacturers could simply replace them rather than prosecute them in court for offences; and finally, they were more often punished informally because masters were concerned that the old doctrine of coverture would prevent legal action being taken against married workers.[137]

Not all of Godfrey's explanations fit with the evidence in my databases, though. It is possible that women's comparatively limited mobility in mills prevented them from embezzling as easily as men did. However, it seems unlikely that female mill workers were deterred from embezzling by a dread of imprisonment, when they continued to commit other offences for

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[137] Barry Godfrey, "Workplace Appropriation and the Gendering of Factory 'Law': West Yorkshire, 1840-80," *Gender and Crime in Modern Europe*, ed. Margaret L. Arnot and Cornelie Usborne (London: UCL Press, 1999), 138-141.

which they were incarcerated. Similarly, it seems improbable that masters were reluctant to prosecute women for embezzlement when they continued to do so for other transgressions – most notably leaving their service.

Female workers in textile mills seem to have been charged most often with absenting themselves from their service. For instance, in the Devizes petty sessions record, 12, or 75%, of the female textile workers, who as we shall see were all employed on twelve-month contracts at the same silk mill, were charged with leaving their service.[138] As we saw in Tables 5.9 and 5.10, absconding was the second most frequent grievance brought against female textile workers in the Pre-Sentencing Database and the most common one in the Post-Sentencing Database. The geographical source base of the two datasets accounts for this difference between them.

Whereas the sources for the Pre-Sentencing Database were drawn in part from regions with significant domestic textile industries, such as Guilsborough and Mere, the primary source for cases involving textile workers in the Post-Sentencing Database was the Stafford house of corrections register. It is not possible to prove conclusively that all of the textile workers in this source were employed in mills. Although they were identified by occupation, such as cotton spinner or tape weaver, it is difficult to determine whether they were working for putting-out agents or factory owners, since the name of the plaintiff was not often recorded. However, the information that is available suggests that the majority of these textile workers were employed in mills. For instance, the eighteen-year-old cotton spinner Mary Allen, who was imprisoned for one calendar month in 1801 for absenting herself from her service, was one of the few workers whose employer's name actually was recorded. She worked for Thomas Dicken & Company.[139] Trial records show that Thomas Dicken, along with Joseph Dicken, Benjamin Wilson, Richard

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[138] WSHC, B13/100/2, Devizes Minute Books, September 16, 1834.
[139] SRO, D(W)/1723/1, Register for House of Correction, Prisoner 636, December 1801.

Meek, and William Monsby, owned and operated a cotton mill at Alrewas in Lichfield, to which a worker would accidentally set fire seven years later.[140]

One of the committing magistrates in Mary Allen's case was John Lane, an "active and useful magistrate" who lived near Lichfield.[141] Lane was responsible, acting alone or in petty sessions, for incarcerating 6, or 18%, of the female textile workers in the Stafford house of corrections register, including the cotton spinner Susannah Savigal, who had deserted her service.[142] In this instance, Lane was acting with the Reverend James Falconer, the prebendary of Lichfield, who, by himself or in petty sessions, was also responsible for imprisoning 6, or 18%, of the female textile workers in the register.[143] Given that mills, including that of Dicken and Company, were being established rapidly in Lichfield around the turn of the century, it is likely that the workers incarcerated by Lane and Falconer were employed in them.[144] We can be fairly sure that these workers were local – and therefore probably mill workers – because there were other active magistrates within a four and a half hours' walk of Lichfield or even closer, including William Humberston Cawley Floyer of Hints Hall in Tamworth and the Reverend Alexander Bunn Haden in Wednesbury, who happened to be the most active Staffordshire JP between 1783 and 1802.[145] There would be no need for masters from further afield to travel to

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[140] William Oldnall Russell and Edward Ryan, "Rex v. William Farrington," *Crown Cases Reserved for Consideration; and Decided by the Twelve Judges of England, From the Year 1799 to the Year 1824* (London: A. Strahan, 1825), 207.
[141] Sylvanus Urban*, The Gentleman's Magazine*, Vol.137 (18th of a New Series) (1825), 87.
[142] SRO, D(W)/1723/1, Register for House of Correction, Prisoner 907, April 1804.
[143] "Monthly Obituary," *The European Magazine, and London Review*, Vol. 55: From January to June, 1809 (London: James Asperne, 1809), 409.
[144] "Lichfield: Economic History," *A History of the County of Stafford*: Volume 14: Lichfield, ed. M W Greenslade (London: Victoria County History, 1990), 109-131, accessed November 25, 2015, http://www.british-history.ac.uk/vch/staffs/vol14/pp109-131.
[145] Aleyn Lyell Reade, "Appendix L: The Levetts of Lichfield," *The Doctor's Boyhood Appendices*, Johnsonian Gleanings Part 4 (London: Aleyn Lyell Reade, 1923),191; Frederick Hackwood, *Old Wednesbury: Its Whims and Ways* (Wednesbury: Ryder and Son, 1899), 50; Hay, "Dread of the Crown Office," 34.

Lichfield in order to prosecute their workers when they could find other accommodating justices nearer to home.

William Floyer of Tamworth was actually responsible for incarcerating 5, or 15%, of the female textile workers in the Staffordshire house of correction register. Like Lichfield, the vicinity of Tamworth was an area of noted mill development, including a calico printing works.[146] Some of the women that Floyer imprisoned, such as Catherine Evans and Elizabeth Rock, were calico weavers.[147] They were also young – 22 and 19 years old, respectively – and probably single, exactly the type of girls likelier to be employed in factories than the older, married women more typically exploited by the domestic system.[148] Other workers that Floyer committed to the house of correction, such as fifteen-year-old Elizabeth Ash and twenty-year-old Ann Millington, were described as cotton spinner apprentices.[149] In the late eighteenth century, the large growth in the number of poor children who were parochial wards, and the subsequent financial strain on their parishes under the Old Poor Law, led to their apprenticeship in textile factories in addition to the more customary binding in husbandry, local trades, or domestic service (for girls).[150] It is highly probable that Ash, Millington, and the other apprentices in textile trades worked in factories, since impoverished spinners in the putting-out system would hardly be likely to have taken them on indentures.

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[146] William White, *History, Gazetteer, and Directory, of Staffordshire, and the City and County of the City of Lichfield* (Sheffield: Robert Leader, 1834), 388.
[147] SRO, D(W)/1723/2, Register for House of Correction, Prisoners 111, 113, 1809, p. 57.
[148] Berg, "Women's Work, Mechanization," 73-74, 79.
[149] SRO, D(W)/1723/2, Register for House of Correction, Prisoner 87, November 1808; Prisoner 70, August 1809.
[150] Honeyman, *Child Workers*, 33-54. On factory apprenticeships, see also: Joanna Innes, "Origins of the Factory Acts: The Health and Morals of Apprentices Act, 1802," *Law, Crime and English Society, 1660-1830*, ed. Norma Landau (Cambridge: Cambridge University Press, 2002), 30-55; Jane Humphries, *Childhood and Child Labour*; Pamela Horn, *Children's Work and Welfare, 1780-1890* (Cambridge: Cambridge University Press, 1995); Peter Kirby, *Child Labour in Britain, 1750-1870* (Basingstoke: Palgrave Macmillan, 2003); Mary B. Rose, "Social Policy and Business: Parish Apprenticeship and the Early Factory System, 1750-1834," *Business History* 31/4 (1989): 5-32.

Moreover, the textile mills of the first baronet Sir Robert Peel were among those located in Tamworth, and parish apprentices were definitely employed there.[151] Peel might even have brought some of his workers before Floyer for punishment. The two men certainly knew each other. It is unclear if their interactions were amicable in the early years of the nineteenth century, when Floyer was imprisoning textile workers – perhaps including Peel's – but by1821 they were embroiled in a legal battle. Peel had charged Floyer with libel for several defamatory letters that the latter had published in the *Litchfield Mercury* under the pseudonym "Philo Justus."[152] King's Bench wound up fining Floyer a staggering £1000 and ordering his imprisonment in the custody of the Marshal of Marshalsea for three months until the sum was paid, "lament[ing] extremely that a person of [his] rank and [his] station in society – a magistrate far advanced in life, not in the heat of the moment, but after time to deliberate and consider, should have sent out into the world, libels like these, upon Sir Robert Peel."[153]

The Treatment of Textile Workers

Whether they were putting-out workers accused of embezzlement or mill workers charged with leaving their service, it is clear that women in the textile industries were treated harshly under the law. Indeed, they were dealt with more severely than female servants in general and more severely than their male counterparts in the textile trades. In the Pre-

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[151] R. G. Thorne, "Peel, Robert I (1750-1830), of Drayton Manor, Staffs." *The History of Parliament: The House of Commons, 1790-1820*, ed. R. Thorne (1986), http://www.historyofparliamentonline.org/volume/1790-1820/member/peel-robert-i-1750-1830; Katrina Honeyman, "Compulsion, Compassion and Consent: Parish Apprenticeship in Early-Nineteenth-Century England," *Childhood and Child Labour in Industrial England: Diversity and Agency, 1750-1914*, ed. Nigel Goose and Katrina Honeyman (London: Ashgate, 2013), 72 n. 11.

[152] *A Correct Statement of the Proceedings in the Court of King's Bench, on Thursday 28th June, and Monday 2nd July, 1821. In the Case of the King, on the Prosecution of Sir Robert Peel, Bart. Against William Humberston Cawley Floyer, Esq.* (London: John Hatchard and Son, 1821), 1-2.

[153] *Correct Statement*, 85.

Sentencing Database, 11 – or 23% – of the cases in which female textile workers were defendants ended with the women's imprisonment, compared to 7 – or 11% – of the cases involving male textile workers. In general, female and male servants were incarcerated at rates of 12% and 19% respectively.[154] Thus, while male textile workers were actually treated more leniently than male servants accused of employment offences overall, the opposite was true of female textile workers. Moreover, women accounted for 61% of all imprisoned textile workers compared to just 12% of imprisoned workers in general. Additionally, textile workers made up 31% of all female servants sentenced to the house of correction in the Pre-Sentencing Database, and only 3% of all the male servants sentenced to bridewell.

The harsh treatment of female textile workers is exemplified in the Devizes petty sessions records kept between 1834 and 1840. A market town in central Wiltshire known historically for its cloth trade, Devizes had transformed by the early nineteenth century into a primarily commercial centre. Although its clothiers had all left by 1830, a silk throwing trade had emerged by the end of the Napoleonic War.[155] Disputes in this industry made up about a quarter of the master and servant business that the magistrates of the Devizes petty sessions handled. Ten or so justices regularly took it in turns to attend the twice-monthly meetings in the seven-year span covered by the records. None of them appear to have been involved in the textile industry. Some, like William Hughes, were bankers; others, like Colonel Charles Lewis Phipps, were military

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[154] In total, 36 cases involving female servants and 253 cases involving male servants ended with imprisonment in the Pre-Sentencing Database.

[155] A P Baggs, D A Crowley, Ralph B Pugh, Janet H Stevenson and Margaret Tomlinson, "The Borough of Devizes: Trade, agriculture and local government," *A History of the County of Wiltshire*, Volume 10, ed. Elizabeth Crittall (London: Victoria County History, 1975), 252-285. *British History Online*, accessed April 15, 2017, http://www.british-history.ac.uk/vch/wilts/vol10/pp252-285.

men.[156] Henry Stephen Olivier (1796-1866) of Potterne Manor House was both a banker and a lieutenant colonel in the army – as well as being the great-grandfather of the famous actor Laurence Olivier.[157] Thomas Henry Sutton Bucknall Sotheron Estcourt (1801-1876) of New Park was a Tory MP who was enamoured of "quiet service" to his county, including his "continual personal exertion" as a magistrate. He had been appointed to the commission of the peace for Wiltshire when he was twenty-four years old, and three years later elected as a borough justice for Devizes. A popular gentleman known for his "unvarying kindness and courtesy of manner," he was particularly celebrated as a founder of the Wiltshire Friendly Society, through which he strove to raise the "material [and]…moral tone of the working classes." According to his friend Earl Nelson, his own labourers "looked up" to him "as a very father."[158] Despite his avowed paternalism, however, Estcourt sentenced 100% of the female textile workers who appeared as defendants before him to the house of correction.

Indeed, textile workers – particularly women – were generally treated harshly at the Devizes petty sessions, as demonstrated by the magistrates' dealings with Peter Walker, a leading silk manufacturer in the community. From at least 1823, Walker owned the Belvedere

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[156] Burke, *A Genealogical and Heraldic History*, 6th ed., Vol. 2 (1882), 1278; Bernard Burke, *A Genealogical and Heraldic History of the Colonial Gentry*, Vol. 1 (London: Harrison and Sons, Pall Mall, 1891), 297.

[157] L. G. Pine, *The New Extinct Peerage, 1844-1971: Containing Extinct, Abeyant, Dormant and Suspended Peerages with Genealogies and Arms* (London: Heraldry Today, 1972), 210; Terry Coleman, *Olivier: The Authorised Biography* (London: Bloomsbury Publishing, 2005), 3.

[158] H. M. Stephens, "Estcourt, Thomas Henry Sutton Sotheron (1801-1876)," rev. H.C.G. Matthew, *Oxford Dictionary of National Biography*. Oxford University Press, 2004 [http://www.oxforddnb.com.ezproxy.library.yorku.ca/view/article/8894, accessed 7 Jan 2015]; Stephen Farrell, "Bucknall Estcourt, Thomas Henry Sutton (1801-1876)," *The House of Commons, 1820-1832*, ed. D. R. Fisher, Vol. 4: Members A-D (Cambridge University Press, 2009) [http://www.historyofparliamentonline.org/volume/1820-1832/member/bucknall-estcourt-thomas-1801-1876]; Joseph Stratford, *Wiltshire and Its Worthies: Notes Topographical and Biographical* (Simpkin Marshall, 1882), 9-11; Thomas Ward, *Men of the Reign: A Biographical Dictionary of Eminent Persons of British and Colonial Birth Who Have Died During the Reign of Queen Victoria* (G. Routledge and Sons, 1885), 303; "Memoir of Mr. Sotheron Estcourt and Mr. Poulett Sorope," *The Wiltshire Archaeological and Natural History Magazine* Volume 16 (1876): 341.

silk-throwing mill, where he employed a "great number of persons," according to the 1826 petition he and fellow factory owner Robert Waylen presented to the House of Commons. They were demanding the repeal of 5 Geo. 4 c. 21 (1824), an Act "for the admission of Foreign wrought and thrown Silks for home consumption," which they declared had led to the "fearful stagnation of the Silk trade" and the "painful necessity" of discharging many of their mill workers. They insisted that unless the government renewed its protection of their trade, they would be forced to shut down their enterprises altogether, entailing a "ruinous sacrifice" of their property and the "greatest distress" on the vulnerable workers whom they supported.[159] Notwithstanding these dire predictions, Belvedere Mill continued to operate for the next three decades. In 1855, by which time Peter's son Frederick Walker had taken over as owner, the mill was still employing100 hands, according to the Devizes Post Office Directory. Four years later it closed its doors permanently.[160]

Peter and (more rarely) Frederick Walker were involved in 25, or 24%, of the employment disputes heard by the magistrates of the Devizes petty sessions. They were the plaintiffs in 23 – or 92% – of their cases. Given that Belvedere Mill's workforce was largely female – Walker emphasized in his petition that the workers he employed were "particularly women and children, who are unable to gain employment in any other branch of trade or agriculture" – it is not surprising that women were the defendants in 16 – or 70% – of these

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[159] They particularly objected to the "more recent Order in Council for the reduction of the duty on Foreign thrown Silks from 7s6d to 5s the pound." PP 1826, Vol. 81, "Journals of the House of Commons, February 10, 1826," Journals, 10 February 1826, p. 31; Baggs, Crowley, Pugh, Stevenson, Tomlinson, "Devizes," 252-285.

[160] Baggs, Crowley, Pugh, Stevenson, Tomlinson, "Devizes," 252-285; R. W. H. Willoughby, "Water-Mills in West Wiltshire," *The Wiltshire Archaeological and Natural History Magazine* 64 (1969): 99 n.14.

cases.[161] In fact, Walker actually prosecuted 22 individual women, since three of the 16 cases involved multiple defendants. For instance, Margaret Oakford, Jane Goldberry, Jane James, and Elizabeth Mullins stood accused together of leaving Walker's service without permission.[162] Altogether, women comprised 76% of the defendants in Walker's cases.

Walker not only prosecuted more women than men, but the Devizes petty sessions magistrates treated the women more harshly as well. The defendants were imprisoned in 8, or 50%, of the charges brought against female workers, and 3, or 43%, of those against men. All three cases with multiple female defendants ended in the incarceration of the accused. Thus, 14 individual women were actually imprisoned, or 64% of all female textile workers. Peter Walker obviously kept using master and servant law against his workers – especially the women – because it was a successful strategy for him.

His prosecutions of his mainly female workforce served several related purposes. First and perhaps foremost, they bound his mill operatives to him even when it seems he had no immediate employment for them. As we have seen, nineteenth-century master and servant law had become more biased in favour of employers.[163] The implied mutuality of obligation in the master and servant relationship had by this point become merely notional. Workers were still bound to their masters for the length of the agreed-upon term, but the high court refused to uphold the master's reciprocal duty to furnish employment or wages during this time.[164] The Devizes magistrates also seem to have subscribed to this unequal doctrine, to Peter Walker's advantage. He was only a defendant at the petty sessions twice, in two separate cases heard on

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[161] PP 1826, Vol. 81, "Journals of the House of Commons, February 10, 1826," Journals, 10 February 1826, p.31.
[162] WSHC, B13/100/2, Devizes Minute Books, November 20, 1838.
[163] Hay, "Master and Servant," 231.
[164] Deakin and Wilkinson, *Law of the Labour Market*, 65-66; Steinfeld, *Coercion*, 122.

the same day in February 1839. The first plaintiff, Henry Winter, under contract for twelve months to Walker, complained that the mill owner refused to employ him or permit him to be employed by any other person. The justices dismissed his grievance. Then Walker brought a charge against Winter alleging that he had absented himself without consent before the expiration of their contract. The JPs sentenced Winter to one month's imprisonment with hard labour.[165]

The second plaintiff was Mary Ann Wheeler, quite possibly the same person charged five years previously by Walker with leaving her service for three weeks and two days. On that occasion, Estcourt was one of the JPs who sentenced her to twenty days' imprisonment and "privately recommended" that Walker should discharge her at the end of the period.[166] He does not seem to have followed their advice, since in February 1839 Wheeler complained that Walker had discharged her from his employment "several months" before and ever since prevented her from obtaining work elsewhere. Like Winter's grievance, Wheeler's was dismissed and followed by Walker's claim that she had absented herself before the end of the term of her contract. The magistrates ordered her to return and perform it, though if her version of events was accurate, there was not much work for Wheeler to do.[167] Three months later, in May 1839, Walker charged Mary Ann Wheeler before Estcourt and his colleague Ernle Warriner with absenting herself yet again. This time they committed her to the Devizes house of correction for seven days and ordered Walker to discharge her at the end of her week's imprisonment. He "promised" to do so.[168]

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[165] WSHC, B13/100/2, Devizes Minute Books, February 19, 1839.
[166] WSHC, B13/100/2, Devizes Minute Books, September 16, 1834.
[167] WSHC, B13/100/2, Devizes Minute Books, February 19, 1839.
[168] WSHC, B13/100/2, Devizes Minute Books, May 14, 1839.

It is possible that Estcourt and Warriner intended this ruling as a favour to Wheeler, who was obviously not happily employed with Walker. The fact that he had to 'promise' to discharge her – the way that recalcitrant servants often had to promise to behave better, or defaulting masters had to promise to pay wages by a certain date – suggests that it was not a course of action Walker would have pursued willingly. Indeed, he apparently refused to discharge her the first time the magistrates recommended he do so. Walker's whole history at the Devizes petty sessions shows that he did not like to dismiss his mill workers. He used master and servant law as a way of binding them to him whether he actively needed their labour at the moment or not by prosecuting them for absences even if he was not providing them with work in the meantime. Whether or not Estcourt and the other magistrates sympathized with Mary Ann Wheeler to some degree, they still enabled Walker's exploitation of his workforce through summary employment proceedings by routinely punishing the workers who left his service, often with imprisonment, and by dismissing the grievances they brought against the mill owner.

Not only was Walker able to use employment law as a tool for keeping his mill workers bound to him even in slack periods, but he also quite possibly used it to prevent labour organization and unionization. In addition to the cases with multiple defendants, there were petty sessions meetings at which Walker brought multiple cases in the same day. For example, on June 25, 1839, he charged Jane Long and John Hasborough separately with leaving their service. Hasborough was "let off" upon paying for the summons, while Jane Long was imprisoned for one month.[169] Three months later, Walker prosecuted Long again for the same offence, on the same day that he also brought separate charges against John Robertson, Lucy Rose, and Sarah

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[169] WSHC, B13/100/2, Devizes Minute Books, June 25, 1839.

Wheeler for leaving their service with him.[170] Kitty Brewer, Elizabeth Glass, Margaret Oakford, Jane Goldberry, Jane James, and Elizabeth Mullins were all charged on the same day in November 1838, the first two together for refusing to perform work required of them, and the latter four for leaving service without permission. All six women were sentenced to the house of correction.[171] Although there is no definite indication of it in the court records, it is possible that the workers charged on the same date, whether together or separately, had been striking. Employers often prosecuted their servants for offences such as leaving work unfinished rather than striking itself, since it was easier for them to secure convictions under master and servant law than it was under the infamous combination acts. Multiple master and servant charges on the same day for the same offence sometimes indicated that a strike had occurred.[172]

Finally, Peter Walker might have been using employment law in conjunction with another legal device to extract obedience from his workers. Hay has shown that mill owners were increasingly using written contracts to grant themselves disciplinary powers over their operatives. For instance, the standard contract at Cooper & Company's cotton mill in Ashbourne, Derbyshire, specified that the female signatory would work for thirteen hours a day, six days a week, at the weekly wages of four shillings, and would "be at her own liberty at all other times." If she absented herself, the company reserved the right to abate her wages or discharge her.[173] In 1823, George White claimed that the use of such contracts in conjunction with the traditional penal sanctions imposed summarily by a magistrate had rendered master and servant law even more inequitable to servants. He argued that illiterate workers came to verbal agreements with masters and then signed written contracts that did not match these terms. When their masters

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[170] WSHC, B13/100/2, Devizes Minute Books, September 3, 1839.
[171] WSHC, B13/100/2, Devizes Minute Books, November 20, 1838.
[172] Hay, "England," 101.
[173] Hay, "England," 102.

began enforcing the more exploitative terms of the written contracts, the workers objected that they had not agreed to such conditions and attempted to leave their service. Then their masters threatened to "take [them] before a justice, and send [them] to the house of correction….[to] dance upon the tread-mill" if they did not return to work. These were not empty threats. When the workers were brought up on warrants before magistrates, the JPs consulted the written contracts and declared: "I have it here in black and white, that you agreed to work for so much per week, and you must go to work, or go to the house of correction."[174]

As White asserted, masters were clearly continuing to avail themselves of the summary powers of magistrates while also binding their workers with written contracts. For instance, Hay has found that Cooper & Co. continued approaching justices to enforce penal sanctions such as imprisonment on misbehaving workers, despite the fact that the contracts they drew up stipulated that they could discharge or abate the wages of workers who absented themselves on their own authority. Written contracts gave employers the double advantage of being able to discipline their workforces with and without recourse to magistrates.[175]

I have not found any surviving examples of written contracts drawn up by the manufacturers in my sources. In fact, the mill owners who brought master and servant complaints before the JP Thomas Allen explicitly did not use written contracts. Allen's notebook, which covers the years 1823 to 1824, contained many disputes involving silk workers, which is not surprising since the silk industry had long been dominant in the town. After more than a century of specializing in silk throwing, the descendants of Huguenot refugees introduced silk weaving to Macclesfield in the 1790s and mills quickly sprang up in the area. In the 1820s,

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[174] George White, *A Digest of All the Laws at Present in Existence Respecting Masters and Work People: With Observations Thereon* (London, I. Onwhyn, 1824), 96-97; Hay, "England," 103-104.
[175] Hay, "England," 102-103.

when the industry had recovered from an acute depression following the end of the Napoleonic Wars, these mills employed more than 10,000 people in the Macclesfield area.[176]

Several of the masters who appeared as plaintiffs in Allen's notebook, including Nathaniel Davenport and Samuel Wardle, were among the 43 Macclesfield silk manufacturers and silk throwsters who signed a resolution in March 1824 that "the servants employed in [their] respective factories, who are not already under written hirings, shall in future be hired for us, in the same manner as the servants are hired in the neighbouring manufacturing towns; that is to say, to be employed and work in the factories for twelve hours on each working day." The Macclesfield silk workers opposed this resolution so strenuously – even starting a subscription to fund a strike – that the manufacturers were forced to withdraw it, declaring peevishly that it was "deeply to be regretted, that the orderly, quiet, and peaceable working classes of this town and neighbourhood, should so far have lost sight of their true interest…as to reject the proposition…which if rightly considered, is fraught with greater advantages to them than to their employers; but the master manufacturers and throwsters do not see any advantage to be derived by themselves from this measure, sufficient to induce them any longer to contend the point with their servants, and hereby resolve to leave them to wait the arrival of that conviction which…may yet be enforced by privation and suffering."[177] This episode highlights that the manufacturers in Allen's notebook may not have had the double advantage of penal enforcement and written contracts to discipline their workers, but most other industrialists probably did.

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[176] C. Stella Davis, ed, *A History of Macclesfield* (Didsbury: E. J. Morten, 1976), 124-134, 196; Judy Lown, *Women and Industrialization: Gender at Work in Nineteenth-Century England* (Cambridge: Polity Press, 1990).

[177] CALS, D4655, Thomas Allen, April 12th and April 28th, 1823; PP 1824, Vol. 5, "Select Committee on State of Law in United Kingdom Respecting Artisans Leaving Kingdom, and Exportation of Tools and Machinery, and Combination of Workmen to Raise Wages: Report, Minutes of Evidence," 51, p. 582-585.

Notably, the Macclesfield masters wanted to hire workers in the "same manner" as all the neighbouring manufacturers. Hay affirms that the use of written contracts in industrial concerns with large workforces was "undoubtedly widespread."[178]

It is likely that the workers at the Belvedere Mill had signed written contracts. Both Henry Winter and Mary Ann Wheeler, who complained that Peter Walker was not employing them, were described as being under "contract" to him for twelve months.[179] Kitty Brewer and Elizabeth Glass were charged with "refusing to perform work required of them according to their agreement."[180] Since 64% of female textile workers prosecuted by Walker at the Devizes petty sessions were imprisoned, it seems likely that he was using the penal sanctions of master and servant law as an alternative to any power of dismissal at will he might have arrogated to himself via the use of contracts. Walker did not want the magistrates to discharge his workers or abate their wages. He could probably have done so under his own authority. He seems to have wanted them to incarcerate recalcitrant workers, and in many cases they obliged him.

Conclusion

Over the course of the decades covered by this dissertation, female servants made up a decreasing proportion of all disputants in master and servant cases. The average share per source of employment conflicts involving women workers was twice as high in the period from 1685 to 1780 as it was in the period from 1780 to 1860. This is likely due to the fact that from the last quarter of the eighteenth century, women were beginning to be driven out of employment in arable agriculture. Most of the sources in the dissertation were drawn from primarily agricultural

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[178] Hay, "England,"103.
[179] WSHC, B13/100/2, Devizes Minute Books, February 19, 1839.
[180] WSHC, B13/100/2, Devizes Minute Books, November 20, 1838.

areas. Thus, the declining share of female workers in master and servant cases was a reflection of women's declining share as part of the labour force in these regions.

Notably, sources drawn from areas with substantial textile industries were exceptions to the trend of decreasing shares of cases involving female servants. The majority of these sources date from the second half of the period covered by the dissertation. Most of them contained above average shares of employment disputes involving women workers. This is not surprising, given that a significant portion of the textile labour force was female. Spinning, for example, had long been a primarily feminine occupation. Since they were considered to be cheaper and more biddable workers than their male counterparts, women were also employed in large numbers in the textile mills and factories that were rapidly being established at the turn of the nineteenth century.

The textile industries were at the forefront of the Industrial Revolution. Even the large sectors that remain unmechanized contributed to the growth and dynamism of the more modern factory sector.[181] Thus women, both as outworkers and as mill operatives, were part of the vanguard of England's economic transformation. They contributed enormously to the productivity of the textile industries. It was not only innovative labour practices and new machinery that elicited this productivity. Master and servant law also played a role.

Female textile workers were overwhelmingly defendants in master and servant disputes. Manufacturers were able to take advantage of the increasingly inequitable body of employment law to force these women to work longer and harder. They prosecuted worsted spinners for embezzlement in order to compel them to turn out greater quantities of yarn more quickly and ease the industry bottleneck. Without the supplementary income generated by embezzled

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[181] Berg and Hudson, "Rehabilitating the Industrial Revolution," 26-27, 30-32.

material, spinners would have to be more industrious to earn a living by their piece rate wages alone. Mill owners used master and servant law, often in combination with stringent written contracts, to bind workers to them and prevent them from leaving even if they refused to pay them or employ them as expected. The threat of the penal sanctions of master and servant law, including stints in the house of correction – where female textile workers were sent more often than their male counterparts and than female servants in general – coerced factory operatives into performing contracts that often demanded long, gruelling hours of work. Clearly, master and servant law was a key component in the creation and compulsion of a productive (female) labour force.

Conclusion

This dissertation is the first scholarly work to make gender and the experience of female workers central to a history of employment law, as they were to its actual conception and application. The preceding chapters have highlighted how gender shaped the theory and practice of master and servant law in important and sometimes contradictory ways. A fundamental tension existed in the law between its roots in a generalized ideology of separate spheres and the reality of its application, which included its targeted use to discipline a female workforce that was part of the vanguard of the Industrial Revolution. Master and servant law both excluded and exploited female workers in the eighteenth and nineteenth centuries in particular ways that did not necessarily pertain to their male counterparts.

One of the contributions of this study has been to show how gender as well as class hierarchy was built into the foundations of the law. Scholars have argued that the subordination of labour was central to master and servant legislation from its medieval origins.[1] A particular ideological equation of work with masculinity was also embedded in the statutes and case law. Although the notion of separate spheres for men and women did not reflect reality or hold currency with all members of society, it was an important cultural discourse. On a basic level, men were associated with work and productivity, while women were associated with domesticity and the family. This antipathy to women working outside the home was incorporated into legislation governing their employment relationships. The androcentric wording of the master and servant statutes semantically erased women from their provisions, even though they were meant to apply to workers of both sexes.

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[1] Hay and Craven, "Introduction," 26; Hay, "England," 62-64.

Kenyon's decision in *R v. Inhabitants of Hulcott* (1796) accomplished a more substantive erasure of women by effectively removing domestic servants, a predominantly female workforce, from the coverage of employment legislation on the grounds that they were not specifically mentioned in the statutes. The ideological disconnect between women and 'real' work made it easier to determine that domestic service, which often blurred the boundaries between housework and agricultural work, did not qualify as any of the occupations that were specifically mentioned, such as service in husbandry. This disconnect also made it easier to block attempts at passing new laws explicitly including domestic servants.

Accounts that ignore the role of gender, as well as the distinct experiences of female servants, perpetuate the same erasure of women as the androcentric statutes upon which the employment regime was based. They also miss important aspects of doctrinal shifts. For instance, Ellenborough's decision in *Spain v. Arnott* (1817) greatly expanding masters' powers of dismissal has been recognized as a hallmark of the mounting inequality of the master and servant regime. However, in 1777, when high court doctrine still generally held that employers wishing to dismiss their servants before the end of their contracted terms needed to have recourse to a magistrate, Mansfield ruled in *R. v. Inhabitants of Brampton* that masters, under their own authority, could discharge servants for being pregnant.

Female servants were good to 'think with,' as Carolyn Steedman has argued, and in this case they were good subjects for thinking about the authority of masters in the employment relationship.[2] When faced with a woman who had scandalously flouted 'appropriate' conventions of feminine behaviour by becoming pregnant outside of marriage, it was easy for Mansfield to

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[2] Steedman, *Master and Servant*, 145.

conceive of an employer's need to be immediately rid of a troublesome worker, when in the context of other types of servants' misbehaviour he opposed this power to dismiss.

Although male servants could theoretically also be immediately discharged for 'immorality' as a result of this ruling, in practice women were disproportionately affected by it. Society was more concerned with policing unwed mothers than fathers, as bastardy laws make clear. The stigmatization of unmarried pregnant women was partly rooted in economic concerns about illegitimate children becoming financial burdens on parish ratepayers, and partly in disgust (not shared by all classes) at female 'promiscuity.' It was his loathing of sexual impropriety that prompted Mansfield's decision in *R. v. Inhabitants of Brampton*. Thus, a subset of female servants was deprived of the protection from dismissal without notice that employment law still afforded other workers, because of ideological beliefs about appropriate feminine behaviour. Women disproportionately bore the earliest brunt of the increasing class bias of the law.

Histories that treat male workers' experience as normative can distort our understanding of the law's administration. For example, scholars analysing the increasingly criminal character of master and servant law remark that the numbers of prosecutions did not decline over the course of the nineteenth century and were even highest in the final years before the repeal of penal sanctions.[3] However, such statements assume that male workers' experiences are representative.

My data shows a definite downward trend in female servants' involvement in master and servant cases in the first half of the nineteenth century. I have argued that this was a function of their changing labour force participation. However much certain propertied commentators might oppose the idea of women working, they nevertheless did, although their economic opportunities

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[3] Steinfeld, *Coercion*, 81; Hay, "England," 107-109.

were always more limited and subordinate than men's by virtue of their gender. It is not possible to systematically compare women's involvement in master and servant cases with their labour force participation, since quantitative measures of the latter do not exist for most of the period covered by the dissertation and are problematic when they do become available in the second quarter of the nineteenth century. I speculate, though, that the fact that women made up on average about a fifth of all workers involved in master and servant disputes is related to their generally lower levels of labour force participation compared to men.

Although there are exceptions across different regions and industries, overall women's economic opportunities and participation rates decreased in the nineteenth century. By the last quarter of the eighteenth century, women's employment in areas of arable agriculture in the south and east of England was declining. Although women made a proportionately greater contribution to manufacturing, both in the domestic putting-out system and in the new factories and mills, in the eighteenth century than they had before or would do in the later stages of industrialization, protective labour legislation and the exclusionary practices of trade unions and male workers combined to restrict women's industrial employment and earning potential in the nineteenth century.

I contend that these downward trends in female labour force participation, particularly in agriculture, account for the declining share that female workers made up of all disputants in master and servant cases in my sources over the course of the period. Since the majority of the sources examined in this dissertation were drawn from regions of primarily arable agriculture, the observed decline in female servants' involvement in employment disputes seems to be a reflection of their decreasing employment in these areas. It is telling that sources drawn from regions that emphasized pastoral agriculture, in which female labour remained important, and

from textile-producing regions, where women made up a greater proportion of the workforce than they did in agriculture, tended to boast higher shares of master and servant cases involving women workers.

This examination of female servants' declining involvement in employment disputes shows the importance of disaggregating data by gender and by region in order to get a sense of the diversity of workers' encounters with master and servant law. Male and female workers experienced the law differently. Women's experiences are as valid as men's, and equally deserving of scholarly attention. They were also shaped at every stage by gendered beliefs and practices, which influenced the kinds of complaints they made and offences they committed, as well as their treatment by magistrates.

Gendered occupational patterns played a role in shaping the types of prosecutions brought against workers. For the most part, employers accused their male and female servants of a similar range of transgressions, including absconding from service, refusing to obey orders, and general misbehaviour. However, charges of drunkenness and cruelty to animals in the dissertation's sources were exclusively made against male workers. These offences were often related, since many of the men prosecuted for being drunk had, in their intoxication, injured or risked injuring the horses in their care. On farms, men were employed to look after horses and draught animals, while women worked in dairies and tended the poultry and smaller animals. This sexual division of labour ensured that men and not women had greater access to horses and would be the ones implicated in any mishaps or malicious attacks involving these valuable animals. For the same reason, only male servants were accused of stealing their masters' grain to feed to their masters' horses.

Servants' thefts in general were highly influenced by gender and the sexual division of labour (itself shaped by gendered assumptions about men and women, such as the customary view of women as subordinate, less valuable workers). Women were more likely than men, proportionately and absolutely, to be charged with stealing clothing from their employers because of the greater importance to female servants of clothes as markers of identity and assets in securing future positions or marriage offers. While workers of both sexes took their masters' money – a universally appealing target – it was proportionately more likely that women would be prosecuted for stealing it larcenously and men for embezzling it. Until the later nineteenth century, women were not employed in occupations, such as clerks and bank tellers, which provided easy opportunities to embezzle money – that is, to illicitly appropriate funds that had been voluntarily placed into the offender's possession by the owner or a third party. On the other hand, women made up the vast majority of domestic servants, who had relatively easy access in the course of their household duties to the rooms where their masters and mistresses kept their money secured. If they took this money, it was considered larceny, since they were removing it 'forcibly' from their employers' constructive possession.

Gendered interpersonal relationships between employers and workers also affected the types of conflicts in which servants of each sex were involved. Female servants brought proportionately more – and, if apprentices are excluded from the sample, absolutely more – assault charges than their male counterparts. Although it is not possible to assert definitely that prosecution rates accurately reflect actual levels of crime, it is very likely that female workers were assaulted more often than male workers. Firstly, both masters and mistresses assaulted female servants, as their complaints to magistrates indicate, whereas mistresses seem to have assaulted their male servants very rarely. Thus, female servants ran a greater risk than male

servants of being assaulted no matter the sex of their employer. Moreover, unlike their male counterparts, female workers were subjected to sexual assault and harassment from their masters as well. In fact, the sexual abuse of female servants was distressingly frequent. Therefore, the greater likelihood of female servants bringing assault charges probably corresponds to their greater likelihood of being assaulted, both sexually and otherwise, compared to male servants.

As assault cases illustrate, in some situations female servants might actually have been advantaged by the dichotomies drawn between masculinity and femininity in the discourse about separate spheres. According to this ideology, women had to be sheltered in the home because they were delicate, innocent, and child-like. The idea that women were vulnerable creatures in need of protection might have influenced some magistrates to treat female servants' complaints about assault and abuse from their employers more sympathetically than those of their male counterparts. Female workers do seem to have been somewhat more successful than male workers in bringing these grievances, whereas generally in employment disputes male servants got favourable results as plaintiffs slightly more often, proportionately, than female servants did.

In the aggregate, magistrates also seem to have treated female servants accused of employment transgressions with relative leniency, although individual justices' practices varied. Unsurprisingly, servants of both sexes were less successful as defendants than they were as plaintiffs in master and servant conflicts. Magistrates tended to rule in favour of complainants, whether they were employers or workers. In general, though, female servants were treated less harshly than male servants for their alleged offences, including theft. With the notable exception of female textile workers, women were proportionately less likely than their male counterparts to be imprisoned, and they made up a smaller share of all workers sentenced to the house of correction than they did of total defendants. It is possible that some JPs dealt less severely with

female offenders than male offenders because they believed that women required gentler treatment.

However, once the sentence had been passed, female workers were granted less clemency than male workers. Male servants who had been incarcerated were released early proportionately more often than female servants. Since women workers, perhaps out of deference to their status as the 'weaker' sex, were not normally punished as harshly as male servants, those who were sentenced relatively severely were probably perceived to have truly earned their punishments. Therefore, they were less eligible for leniency after the fact than male workers, who were incarcerated more readily, but perhaps for less perceived cause. Similar logic might explain why theft and embezzlement charges comprised a greater share of the accusations made against female workers than male workers. It might have required a weightier crime, such as theft, to prompt some employers to take legal action against women.

By focusing on gender and the experience of female workers, this study contributes to a more complete and nuanced understanding of the administration of master and servant law. It also helps to illuminate the gendered elements of the law's coercive nature, which is an important theme in the scholarship on English employment law. Historians have explored the ways that the penal sanctions for workers' breaches, which became increasingly harsh over the course of the period examined here, created a system of 'unfree' labour.[4] Most recently, Marc Steinberg has done case studies of the ways that industrial capitalists in different regions used master and servant law as a strategic means of labour discipline and workplace control. The workers in Steinberg's case studies were "heavily disproportionately male."[5] This study adds

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[4] Steinfeld, *Coercion*, 9, 46, 59; Hay and Craven, "Introduction," 26, 28; Steinberg, "Capitalist Development," 446.
[5] Steinberg, *England's Great Transformation*, 4, 49.

another dimension to accounts of the law's use as a tool of industrial discipline by showing how it could be wielded against a feminized workforce to increase productivity and obedience.

Sources from textile-producing regions, the majority of which date from the second half of the period, were an important exception to the general trend observed in my data of female servants' declining involvement in employment disputes. Most of these sources actually contain above average shares of cases involving women workers. This is not surprising, since women were employed extensively in the putting-out and factory branches of the textile industries for gendered reasons. By long tradition, their labour was cheaper than that of men. They were also considered to be more nimble-fingered, dexterous, and docile workers, amenable to the organizational and technological innovations entailed by the Industrial Revolution. Their employment in the most dynamic sectors of the industrializing economy, probably coupled with a reduced capacity for resistance through unionization due to familial obligations and male exclusionary tactics, left them vulnerable to the prosecutions of masters and manufacturers who took advantage of a law that was increasingly inimical to labour in order to impose discipline and compel productivity.

Manufacturers prosecuted worsted spinners under the industrial embezzlement laws that were being passed, with progressively harsher provisions, in the eighteenth century. By cracking down on embezzlement and removing a source of supplementary income in the form of appropriated material, they hoped to force spinners to turn out greater quantities of yarn more quickly in order to earn enough from their low piece rate wages to make a living. Mill owners used master and servant prosecutions, sometimes in conjunction with restrictive written contracts, to prevent workers from leaving their service even if they failed to pay them a verbally agreed-upon wage or provide sufficient employment. Moreover, they also used the easily

accessible summary remedies of master and servant law to punish striking workers on charges of absconding. As we have seen, Peter and Frederick Walker, the owners of the Belvedere Mill in Wiltshire, made particular use of the accommodating magistrates at the Devizes petty sessions to discipline their largely female workforce.

Unlike almost all other categories of workers, female textile workers were overwhelmingly defendants in the master and servant disputes in this dissertation's sources. These women were treated more harshly than female servants in general and than male textile workers. They were imprisoned proportionately more often than both these groups, and made up the majority of all incarcerated textile workers in the Pre-Sentencing Database. By comparison, male textile workers were actually dealt with slightly more leniently than male servants overall. Thus, this dissertation demonstrates that master and servant law could be instrumental in imposing labour discipline not only on male workers, but also on female workers who made up the vanguard of a key dynamic sector of the industrializing economy.

Exploring the historical intersections of gender ideology, labour practices, and the law is important not only for improving our knowledge of the past, but also for contextualizing the present and future. The British Industrial Revolution is long over, but today the employment situation of many women around the globe is not so different from that of their eighteenth- and nineteenth-century counterparts in England. In April 2015, UN Women, the United Nations Entity for Gender Equality and the Empowerment of Women, reported that women's participation in labour markets is still lower than men's, and their wages continue to be lower than men's on average as well. Nearly 90% of 143 surveyed economies have at least one legal difference between men and women that restricts the economic opportunities of the latter.

Furthermore, more women than men worldwide work in jobs that are vulnerable, poorly remunerated, or undervalued.[6]

In firms producing electronics in the Philippines, product assembly on factory lines is considered "feminine work" because women are thought to be more "manually dexterous and careful;" more "diligent and patient;" "easier to manage, more docile, and less likely than male workers to join trade unions;" and "more willing to work for low wages and have a higher rate of voluntary turnover because of their supposed status as 'secondary wage earners' in the family."[7] This logic is strikingly similar to that governing the employment of women in mills and factories in the early phases of England's industrialization.

In Cambodia, 90% of the estimated 700,000 factory workers in the garment industry are young women, most in their teens and early twenties, who are "paid a pittance…forced to work double and triple shifts, [and] kept on temporary contracts." These short-term contracts help employers evade paying legally mandated maternity and seniority benefits and discourage collectivization. If the workers attempt to unionize or become pregnant, they face "retaliation." Although recently they have won modest increases in the minimum wage through mass strikes and protests, their pay still does not meet the government's standard of a living wage, and even these miniscule victories have come at the cost of reprisals. Dozens of striking workers and activists were arrested, fired from their jobs, and even killed in 2013 and 2014.[8]

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[6] "Facts and Figures: Economic Empowerment," *UN Women*, last modified April 2015, http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures [accessed April 16, 2017]

[7] Steven C. McKay, *Satanic Mills of Silicon Islands?: The Politics of High-Tech Production in the Philippines* (Ithaca: Cornell University Press, 2006), 67.

[8] E. Tammy Kim, "Cambodian garment workers rise up and face a crackdown," *Al Jazeera America*, last modified March 11, 2015, http://america.aljazeera.com/articles/2015/3/11/cambodian-garment-workers-rise-up-and-face-a-crackdown.html [accessed April 17, 2017].

Women today are still discriminated against in the labour market. The law, local regulatory institutions, and the state often continue to collude in their exclusion and exploitation.[9] Knowledge of the past can be a useful guide to the future. The more we understand about the ways in which female workers have historically been marginalized, coerced, and taken advantage of in industrializing economies, the more we can apply that information toward addressing these problems in the modern world. The penal master and servant law that the women in this dissertation experienced may have been repealed, but many of its features and tactics – imprisonment of 'misbehaving' workers, unequal contracts, discriminatory treatment of pregnant employees, to name just a few – live on. We must not lose sight of how and why they came to be, so that we can recognize them in other contexts and find effective means of opposing them, just as workers did a century and a half ago.

[9] Steinberg, *England's Great Transformation*, 171-172; McKay, *Satanic Mills*, 218-219, 249.

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